United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-7239

THE ANDERSON COMPANY and ALICE SCRANTON EASTMAN ANDERSON,

Plaintiffs-Appellants,

-against-

JOHN P. CHASE, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX ON APPEAL
VOLUME I - (pp. 1a thru 365a)

UNITED STATES COURT OF APPEALS
FILED
JUL 25 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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4

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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Volume I

	Page
Docket Entries	1a
Complaint	4a
Answer	12a
Transcript of Proceedings, November 11, 12 and 13, 1974	
Pages 2 through 17	18a - 34a
Pages 19 through 46	35a - 62a
Pages 49 through 58	63a - 72a
Pages 62 through 67	73a - 78a
Pages 70 through 82	79a - 91a
Pages 87 through 93	92a - 98a
Pages 95 through 100	99a - 105a
Page 102	106a
Pages 108 through 153	107a - 152a
Page 156	153a
Pages 158 through 176	154a - 172a
Pages 179 through 211	173a - 205a
Pages 222 through 248	206a - 232a
Pages 252 through 283	233a - 264a
Pages 288 through 315	265a - 292a
Pages 317 through 325	293a - 301a
Page 327	302a

Contents

	Page
Page 343	303a
Pages 346 through 359	304a - 317a
Pages 363 through 374	318a - 329a
Pages 393 through 396	330a - 333a
Pages 399 through 410	334a - 345a
Page 412	346a
Pages 415 through 423	347a - 355a
Pages 426 through 430	356a - 360a
Pages 446 through 450	361a - 365a

Volume II

Trial Exhibits

Plaintiffs' Exhibit 3	366a
Plaintiffs' Exhibit 4	377a
Plaintiffs' Exhibit 5 (front & back) . .	383a
Plaintiffs' Exhibit 6	385a
Plaintiffs' Exhibit 7	386a
Plaintiffs' Exhibit 8	387a
Plaintiffs' Exhibit 11	421a
Plaintiffs' Exhibit 12	425a
Plaintiffs' Exhibit 14	427a
Plaintiffs' Exhibit 15	429a
Plaintiffs' Exhibit 16	435a

Contents

	Page
Plaintiffs' Exhibit 17	437a
Plaintiffs' Exhibit 19	440a
Plaintiffs' Exhibit 20	444a
Plaintiffs' Exhibit 21	453a
Plaintiffs' Exhibit 22	455a
Plaintiffs' Exhibit 24	464a
Plaintiffs' Exhibit 26	465a
Plaintiffs' Exhibit 28	473a
Plaintiffs' Exhibit 32	474a
Plaintiffs' Exhibit 35	475a
Plaintiffs' Exhibit 37	482a
Plaintiffs' Exhibit 39	483a
Plaintiffs' Exhibit 43 (portion)	484a
Plaintiffs' Exhibit 44 (portion)	488a
Plaintiffs' Exhibit 45 (portion)	491a
Plaintiffs' Exhibit 65	530a
Plaintiffs' Exhibit 67	532a
Plaintiffs' Exhibit 68	545a
Defendant's Exhibit 8	565a
Defendant's Exhibit 39	570a
Defendant's Exhibit 40	581a
Defendant's Exhibit 41	585a
Defendant's Exhibit 44 (July 6, 1970, "Trade Winds" portion of 44)	593a

Contents

	Page
Opinion of Hon. Milton Pollack	597a
Judgment	651a
Notice of Appeal dated April 10, 1975	652a
Notice of Motion for Rehearing (with affidavit and Exhibit A)	653a
Answering Affidavit	680a
Memorandum Opinion of Hon. Milton Pollack . .	684a
Notice of Appeal dated June 6, 1975	685a

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

75 CIV 2590

D. C. Form No. 106 Rev.

TITLE OF CASE

THE ANDERSON COMPANY, and ALICE [illegible] ALTMAN, Admx.

AGAINST

JOHN P. CHASE, INC.

ATTORNEYS

For plaintiff:

BITKOWSKY, KOHLENBERG & HYDE,
230 Park Avenue,
N.Y.C. N.Y. 10017
725- 5360

4-11-75

For defendant:

White & Case
14 Wall St, NYC/ 908 2-1080

STATISTICAL RECORD	COSTS		DATE	NAME RECEIPT NO.	REC.	D.
J.S. 5 mailed X	Clerk		4/15	[illegible]	15	15
J.S. 6 mailed	Marshal		4/22			
Basis of Action: ANTITRUST ANTITRUST ACT. 1940 $350,000	Docket fee					
	Witness fees					
Action arose at:	Depositions					

THE ANDERSON COMPANY, INC. VS. JOHN P. CHASE, INC.

JUDGE'S
73 Civ 5

DATE	PROCEEDINGS
Jun6-73	Filed Complaint. Issued Summons.
1 30-73	Filed Deft's ANSWER.
1 30-73	Filed Summons with Marshal's Return. Served John P. Chase by Kathleen B. Grimes, Asst. Treas on 7/11/73.
n 6-73	Filed Pltffs's First Notice to Produce, 10:30 A.M., 9/28/73.
28-73	Filed Stip & Order extending time for deft to respond to Pltff's 1st Notice to Produce to 10/22/73. POLLACK, J.
/73	pre-trial before Pollack J.
4-73	Filed Stip & Order that all documents produced in response to pltffs First Notice to Produce of 8-28-73 which are designated as confidential shall be subject to: disclosure to anyone other than pltffs, D. Anderson & pltffs's, inspection of such documents be used for any purpose other than the conduct and all documents produced and all copies thereof made by pltffs, D. Anderson & pltffs' attys shall be returned to deft upon conclusion of this action. Pollack, J.
/73	Pre-trial before Pollack J.
/74	PRE-TRIAL HELD Pollack, J.
20/74	Filed pltffs' Proposed Findings of Fact.
19/74	Filed deft.'s additional findings of fact.
/74	Pre-Trial before Pollack, J.
11/74	Non-jury trial begun before Judge Pollack.
12/74	Trial cont'd.
13/74	Trial cont'd. pltff. rests. Deft. moves to dismiss the complaint. Decision reserved. pltff. to submit briefs by 12/4/74. deft to submit briefs by 12/16/74. Pollack, J.
/75	Filed memorandum and proceedings dated Nov. 11, 12, 13, 1974
/75	Filed Deft's Post Trial Memorandum.
2/75	Filed Pltff's Trial Memorandum.
2/75	Filed " Post Trial "
2/75	Filed Deft's Trial Memorandum,
2/75	Filed OPINION#42027. Complaint is dismiss on all counts with costs. So Ordered Pollack, J.
/75	Filed JUDGMENT. Deft have judgment against pltffs dismissing complaint on all counts with costs to be taxed. Clk. (mn)
0-75	Filed pltff's notice of appeal to the USCA from judgment entered on 3-14-75. Mailed copy to White & Case.
5-23-75	Filed Pltff's affdvt&Notice of motion granting pltffs a rehearing of trial for limited purpose of offering in evidence ret. 6/2/75, 10:00
05-28-75	Filed Deft's Answering affdvt by Mario Diaz-Cruz III in response to pltff's motion for limited rehearing of trial
06-02-75	Filed Memorandum, on Notice of motion of 5/23/75. Motion denied. Proposed deposition proffered on present motion, taken as wholly of record at trial, would not have bearing, either with respect to resolution of credibility questions or with to findings of fact and conclusions of law previously entered. Dec. 11, 73 deposition is not discovered evidence. Nor may counsel's failure to in section at trial be deemed excusable. There was opp do so, particularly at close of trial when counsel other sections of same deposition. So Ordered. Pollack
/75	Docket Entries and Docket Entries (continued)

A TRUE COPY
RAYMOND F. BURGHARDT

(contd pg. 3)

THE ANDERSON COMPANY ET ANO VS. JOHN P. CHASE

Pg. 3

JUDGE POLLACK

D. C. 110 Rev. Civil Docket Continuation

73 Civ. 2530

DATE	PROCEEDINGS	Date O Judgmer
06-06-75	Filed Pltffs Notice of Appeal from order of 6/2/75, Pollack, J. (mailed copy to White&Case on 6/9/75)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

THE ANDERSON COMPANY, and ALICE SCRANTON EASTMAN ANDERSON,

Plaintiffs,

-against-

JOHN P. CHASE, INC.,

Defendant.

- x

COMPLAINT

Plaintiffs, by their attorneys, Bitowsky, Schwenke & Devine, for their complaint herein allege:

JURISDICTION, PARTIES AND VENUE

1. The action arises under the Investment Advisers Act of 1940, 54 Stat. 847, 15 U.S.C. §80b-1 et seq., as hereinafter more fully appears. Principles of pendent jurisdiction apply with respect to common law counts. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

2. Plaintiff, The Anderson Company, is a limited partnership in which plaintiff Mrs. Alice Scranton Eastman Anderson ("Mrs. Anderson") and Elizabeth Radley Anderson are limited partners and in which Douglas S. H. Anderson ("Mr. Anderson") is the general partner.

3. Plaintiff Mrs. Anderson is, and at all relevant times has been, a resident of the Commonwealth of Massachusetts.

4. On information and belief, defendant John P. Chase, Inc. is a corporation incorporated under the law of the Commonwealth of Massachusetts, having its principal office at 535 Boylston Street, Boston, Massachusetts 02116, and it is, and at all relevant times has been, an investment adviser registered under the Investment Advisers Act of 1940.

5. Venue in this district is proper under 28 U.S.C. §1391(b) in that the claim arose in the Southern District of New York, which was the place of employment of Mr. Anderson at relevant times.

FIRST COUNT

6. During October and November, 1966 plaintiffs and defendant made an agreement pursuant to which defendant was to act as investment counsel for plaintiffs' securities accounts (hereinafter referred to as the "Accounts") and was to render to the accounts investment supervisory services.

7. The agreement provided that defendant's investment advisory fee would be 1/6th of one percent of the fair market value of the Accounts up to $500,000, plus 2/15ths of one percent in excess of $500,000, to be computed at the end of each four-month period, and in no event to be less than $1,000 per year for the three accounts combined. As of June 6, 1968 the minimum fee was raised to not less than $2,500 per year for the three accounts combined.

8. In October, 1966 the account of plaintiff The Anderson Company had a market value of approximately $78,400.

9. In October, 1966 the account of plaintiff Mrs. Anderson had a market value of approximately $103,700.

10. During the conversations between Mr. Anderson, on behalf of plaintiffs, and John P. Chase, on behalf of defendant, in which conversations the investment advisory agreement was made, Mr. Anderson stated that the plaintiffs' primary reason for retaining defendant was their desire to obtain advice based upon the same information, research, and analysis that determined defendant's investment decisions for the large private accounts and publicly-

held investment companies (collectively the "Large Funds") which it advised and managed. This purpose was recognized by the second of defendant's account representatives to be assigned to the Accounts. He stated to Mr. Anderson that the performance of the account of The Anderson Company would be compared with that of The Chase Fund of Boston, an investment company having capital appreciation as its investment policy. Subsequently such a comparison was made.

11. As stated by Mr. Anderson to Mr. Chase the investment goal of the account of The Anderson Company was capital appreciation with some degree of risk acceptable, and modest income return also acceptable, and the goal of the account of Mrs. Anderson was capital appreciation with minimum risk, but with modest income return being acceptable.

12. Defendant commenced advising and counselling the Accounts in late November-early December, 1966.

13. From late 1966 to the fall of 1967 defendant's advisory procedure with respect to the Accounts was either to initiate purchase and sale recommendations by telephone call to Mr. Anderson and subsequently to reiterate the recommendations on defendant's standard confirmation forms mailed to Mr. Anderson in New York, or to use confirmation forms to initiate recommendations by mail. In addition, defendant prepared accurate periodic written appraisals of the Accounts.

14. Between May and October 1967 plaintiffs placed additional funds in the account of The Anderson Company, in the approximate amount of $218,850. Plaintiffs had been encouraged by t supervision which the Accounts had been receiving for some five months. These additional funds were obtained by borrowings made b plaintiffs on the security of real and personal property owned by them. The raising of the additional funds was contemplated in the

fall of 1966, the purpose being to make the Accounts large enough to obtain the high degree of supervision which Mr. Anderson and Mr. Chase agreed the Accounts would receive.

15. Between April and July, 1970, by virtue of sales, redemptions, and a contribution of certain of plaintiffs' property, additional funds in the amount of approximately $121,500 entered the Accounts: $29,500 in the account of Mrs. Anderson and $107,500 in the account of The Anderson Company.

16. Defendant promptly was informed of these additions to the Accounts. The additions increased the total amount available for investment supervision by defendant to approximately $537,700.

17. By early 1968 defendant's advisory procedure with respect to the Accounts had altered. Defendant had ceased initiating recommendations of purchases and sales (by telephone, writing, or otherwise); had ceased reiterating purchase or sale recommendations on its standard confirmation forms; and had ceased submitting to plaintiffs, with reasonable promptness, information which was relevant to plaintiffs' Accounts. In addition, in December, 1968 defendant assigned to the Accounts a new account representative, the third to be assigned within approximately 19 months. He was unfamiliar with the operations of the Large Funds managed and advised by defendant.

18. Although defendant stated that in order to assure continuous and constant supervision of the Accounts two counsellors at all times would be assigned to the Accounts, no more than one was assigned at any time.

19. On information and belief, defendant did not maintain records by security stating the current positions of all its clients in that security, as required by SEC regulation.

20. In addition, defendant recommended for purchase by the Accounts securities which were unsuitable for the Accounts,

which were not on defendant's lists of recommended securities, and of which defendant had failed to make adequate study and analysis.

21. On information and belief, during 1969 and 1970, acting subject to conflicting interests, defendant advised that the Accounts hold, or failed to advise that the Accounts sell, securities which the Large Funds managed and advised by defendant had sold or were selling.

22. In the first half of 1970, despite a rapid decline in stock market averages, defendant failed to recommend any purchases or sales for the Accounts. Therefore, Mr. Anderson directed short sales and purchases without advice and substantial losses ultimately were realized. Defendant did not advise the Accounts to cover short positions in securities which at the time it was recommending for purchase by other accounts.

23. During 1970 defendant failed accurately to report (on its four-month written appraisals to plaintiffs) the securities positions and transactions of the Accounts during, and as of the close of, the period reported on.

24. The Accounts received absolutely no recommendations or advice from defendant from July through October, 1970. In October Mr. Anderson wrote Mr. Chase requesting that defendant attend to the Accounts. Defendant did not act with respect to, or formally reply to, the letter.

25. Defendant made the following representations, among others, to plaintiffs:

(a) that it would render service of a highly personal nature tailored to the plaintiffs' individual investment needs and objectives; and

(b) that the fruits of its research would be effectively applied to the management of the accounts; and

(c) that it would make certain that its research efforts were related directly to plaintiffs' investment problems; and

(d) that it would keep each of plaintiffs' securities under constant review to ascertain whether it continued to contribute to plaintiffs' basic investment objectives; and

(e) that it would recommend changes as changing conditions dictated; and

(f) that it would discuss in detail with plaintiffs the trends which it believed were likely to govern the action of the security markets during ensuing months; and

(g) that it would emphasize the selection of well-situated stocks which would be advantageous to the Accounts.

26. Defendant failed to disclose to plaintiffs that it would make to other clients recommendations which would conflict with those made to plaintiffs.

27. Plaintiffs relied on the representations, as defendant intended and knew they would, and they were deceived by non-disclosures as defendant intended and knew they would be.

28. The representations were untrue, as defendant knew or should have known, all as more particularly alleged in the preceding paragraphs.

29. In accordance with the investment counselling agreement, fees in the total amount of $9,389.96 were paid to defendant for supervisory services rendered from October, 1966 through February, 1971.

30. As a result of defendant's gross negligence in failing actively to advise and monitor the Accounts and defendant conflict of interest in failing to advise plaintiffs when one or more accounts being managed or advised by defendant were selling security owned or being purchased by the Accounts and in failing

to advise plaintiffs when any such account was purchasing a security held in short position by the Accounts, plaintiffs have been damaged in an amount to be determined at the trial of this action, but notless than $350,000.

31. The representations, non-disclosures, acts and omissions of defendant herein alleged constitute the employment by defendant of a device, scheme, and artifice to defraud plaintiffs, as well as a practice and course of business which operates as a fraud and deceit upon plaintiffs, all in violation of §206 of the Investment Advisers Act of 1940, and the regulations thereunder.

32. Defendant used the mails and means and instrumentalities of interstate commerce in connection with the acts and omissions herein alleged.

SECOND COUNT

33. Paragraphs 2, 3, 4, and 6 through 30 above are here repeated.

34. Defendant breached its agreement with plaintiffs respecting the Accounts in that it failed to provide the advice, counselling, supervision, management, analysis, and reporting required by the agreement, and in that it preferred the accounts of other clients to plaintiffs' Accounts, all as more particularly alleged in the preceding paragraphs.

35. As a result of defendant's breach plaintiffs have been damaged in an amount to be determined at the trial of this action, but not less than $350,000.

THIRD COUNT

36. Paragraphs 2, 3, 4, and 6 through 30 above are here repeated.

37. Defendant's gross negligence, conflict of interest, and non-disclosures operated as a fraud upon plaintiffs.

38. Defendant was a fiduciary with respect to plaintiffs' Accounts.

39. As a result of defendant's gross negligence, conflict of interest and non-disclosures, as more particularly alleged in the preceding paragraphs, plaintiffs have been damaged in an amount to be determined at the trial of this action, but not less than $350,000.

WHEREFORE plaintiffs demand a money judgment against defendant in an amount to be determined at the trial of this action, but not less than $350,000, plus interest, plus the costs and disbursements of this action.

BUTOWSKY, SCHWENKE & DEVINE

By Michael C. Devine
A member of the firm
Attorneys for Plaintiffs
220 Park Avenue
New York, New York 10017
212-725-5360

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE ANDERSON COMPANY, and ALICE SCRANTON EASTMAN ANDERSON,	:	73 Civ. 2530 M.P.
Plaintiffs,	:	
-against-	:	ANSWER
JOHN P. CHASE, INC.,	:	
Defendant.	:	

Defendant, John P. Chase, Inc., by its attorneys, White & Case, for its answer to plaintiffs' Complaint:

1. Admits that plaintiffs purport to base the jurisdiction of this Court on allegations made in Paragraph 1 of the Complaint, but except as herein expressly admitted, denies each and every allegation made in Paragraph 1 of the Complaint.

2. Denies knowledge or information sufficient to form a belief as to each and every allegation made in Paragraphs 2 and 3 of the Complaint.

3. Admits that defendant, John P. Chase, Inc., is a corporation incorporated under the laws of the Commonwealth of Massachusetts, having its principal office at 535 Boylston Street, Boston, Massachusetts 02116, and further admits that defendant, John P. Chase, Inc., is an investment adviser as that term is defined in 15 U.S.C. §80b-2(11), which has been registered as such with the Securities and Exchange Commission under the Investment Advisers Act of 1940 from November 1, 1940 to date, but except as herein expressly admitted, denies each and every allegation made in Paragraph 4 of the Complaint.

4. Admits that plaintiffs purport to base the venue of this Court in the statute set forth in Paragraph 5 of the Complaint; denies knowledge or information sufficient to form a belief as to Mr. Anderson's place of employment, but except as herein expressly admitted or otherwise treated, denies each and every allegation made in Paragraph 5 of the Complaint.

FIRST COUNT

5. Admits that on or about November 1, 1966, plaintiff, The Anderson Company, and defendant entered into an agreement (the "Agreement") relating in part to the investment accounts of plaintiffs Alice S. E. Anderson and The Anderson Company, (the "Accounts") and refers to the terms of the Agreement for the contents thereof, but except as herein expressly admitted or otherwise treated, denies each and every allegation made in Paragraphs 6 and 7 of the Complaint.

6. Admits that on or about October 6, 1966, the market value of the securities in the account of plaintiff, The Anderson Company, was appraised at approximately $61,407.50, but except as herein expressly admitted, denies each and every allegation made in Paragraph 8 of the Complain

7. Admits that on or about October 6, 1966, the market value of the securities in the account of plaintiff, Alice S. E. Anderson, was appraised at approximately $102,165, but except as herein expressly admitted, denies each and every allegation made in Paragraph 9 of the Complaint.

8. Admits that conversations have from time to time taken place between Douglas S. H. Anderson ("Mr. Anderson") and John P. Chase ("Mr. Chase"); denies knowledge or information sufficient to form a belief as to the allegations made

in the last three sentences of Paragraph 10 of the Complaint, but except as herein expressly admitted or otherwise treated, denies each and every allegation made in Paragraph 10 of the Complaint.

9. Admits that the account objective of the account of the plaintiff, The Anderson Company, was to place greater stress on capital appreciation than was the account objective of the account of plaintiff, Alice S. E. Anderson, but except as herein expressly admitted, denies each and every allegation made in Paragraph 11 of the Complaint.

10. Admits that on or about November 1, 1966, defendant, John P. Chase, Inc., commenced counselling the accounts, but except as herein expressly admitted, denies each and every allegation made in Paragraph 12 of the Complaint.

11. Admits that the advisory procedure of defendant, John P. Chase, Inc., was to initiate purchase and sale recommendations by telephone calls to Mr. Anderson, and further admits that defendant, John P. Chase, Inc., prepared accurate periodic written appraisals of the accounts, but except as herein expressly admitted, denies each and every allegation made in Paragraph 13 of the Complaint.

12. Admits that between May and October of 1967 additional funds were placed in the account of The Anderson Company; denies knowledge or information sufficient to form a belief as to the allegations made in the second and third sentences of Paragraph 14 of the Complaint, but except as herein expressly admitted or otherwise treated, denies each and every allegation made in Paragraph 14 of the Complaint.

13. Admits that on or about August 13, 1970, funds in the approximate amount of $29,000 were logged as added to the account of plaintiff Alice S. E. Anderson, and funds in the approximate amount of $88,000 were logged as added to the account of The Anderson Company, but except as herein expressly admitted, denies each and every allegation made in Paragraph 15 of the Complaint.

14. Admits that defendant John P. Chase, Inc. was informed of the additions to the accounts referred to in Paragraph 13 above, but except as herein expressly admitted, denies each and every allegation made in Paragraph 16 of the Complaint.

15. Admits that in or about December 1968 Henderson Inches was assigned to the accounts as account representative, but except as herein expressly admitted, denies each and every allegation made in Paragraph 17 of the Complaint.

16. Denies each and every allegation made in Paragraphs 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 31 and 32 of the Complaint.

17. Admits to the decline in stock market averages during the first half of 1970, and further admits that in the year 1970, Mr. Anderson directed short sales and purchases for the accounts without and against the advice of defendant John P. Chase, Inc.; denies knowledge or information sufficient to form a belief as to losses ultimately realized by the accounts, but except as herein expressly admitted or otherwise treated, denies each and every allegation made in Paragraph 22 of the Complaint.

18. Admits that defendant John P. Chase, Inc. received approximately $7,489.43 for counselling services

rendered to the accounts from October 1966 through February 1971, but except as herein expressly admitted, denies each and every allegation made in Paragraph 29 of the Complaint.

SECOND COUNT

19. Repeats its allegations to Paragraphs 2, 3, 4 and 6 through 30 of the Complaint as if fully set forth herein

20. Denies each and every allegation made in Paragraphs 34 and 35 of the Complaint.

THIRD COUNT

21. Repeats its allegations to Paragraphs 2, 3, 4 and 6 through 30 of the Complaint as if fully set forth herein

22. Denies each and every allegation made in Paragraphs 37, 38 and 39 of the Complaint.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

23. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendant prays for judgment dismissing the Complaint together with costs and expenses, including attorneys fees, and such other and further relief as to this Court may be deemed just and proper.

WHITE & CASE

By /s/ Haliburton Fales
A Member
Attorneys for Defendant
14 Wall Street
New York, New York 10005
[212] 732-1040

Dated: New York, New York
July 27, 1973

IR:

LEASE TAKE NOTICE that a.....

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een made herein and was duly entered
nd filed in the office of the Clerk of the

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9.....

WHITE & CASE

ttorneys for.....

14 Wall Street,
Borough of Manhattan,
New York City.

o.....

torney for.....

INDEX NO. 73 Civ. 2530 MP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE ANDERSON COMPANY, and
ALICE SCRANTON EASTMAN
ANDERSON,

Plaintiffs,

-against-

JOHN P. CHASE, INC.,

Defendant.

COPY

ANSWER

WHITE & CASE

ATTORNEYS FOR Defendant

.....

14 Wall Street
Borough of Manhattan
New York City
RECTOR 2-1040

TO.....

ATTORNEY FOR.....

7/21/73

THE CLERK: Anderson Company, et al., against Chase. Counsel ready?

MR. DEVINE: Plaintiff ready.

DIAZ-CRUZ: Defendant ready.

THE COURT: You may proceed.

MR. DEVINE: Your Honor, I would like to correct an oversight in the trial brief which we submitted to your chambers on Friday. It appears to me I omitted the enclosure which the brief says is enclosed.

THE COURT: All right.

MR. DEVINE: Initially, your Honor, we would like to offer as part of the record in the case the agreed to facts in the proposed findings of fact, and mechanically I will work this out, whatever way you and the reporter feel best. I can supply a copy to the reporter or we can refer to them, whatever you think best.

THE COURT: You can supply a copy to the reporter and he will incorporate them in the record at this point.

(Proposed Findings copied into record as follows:)

I. FACTS AGREED TO

4. Plaintiff The Anderson Company ("Anderson Co.") is currently a limited partnership and was organized in Massachusetts.

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

5. At all times between September, 1966, and the present, Douglas S. H. Anderson ("Mr. Anderson") was a general and the managing partner of Anderson Co.

6. In the period from September, 1966, to April 14, 1967, plaintiff Alice Scranton Eastman Anderson ("Mrs. A. Anderson"), Mr. Anderson's mother, was a general partner of Anderson Co. and from April 14, 1967, to the present she was a limited partner.

7. From April 30, 1970, to the present, Elizabeth R. Anderson ("Mrs. E. Anderson"), Mr. Anderson's wife, was a limited partner of Anderson Co. having made the following contribution:

> "100 shares of the common stock, $5.00 par value per share, of Johnson and Johnson, with an aggregate cost basis of $1,002.27 and an aggregate market value of $15,252.88 at the time of contribution."

8. At no time between April 14, 1967, and February 5, 1971, was anyone other than Mrs. A. Anderson and Mrs. E. Anderson a limited partner of Anderson Co.

9. Anderson Co. was capitalized prior to October 6, 1966, with assets derived from Anderson Engineering Co., a manufacturing concern founded in 1931 by Mr. Anderson's father. Mr. Anderson's father and plaintiff

Mrs. A. Anderson together owned one hundred percent of the common stock of Anderson Engineering Co.,Inc., of which Mr. Anderson's father was president prior to his death in October, 1964.

11. From September, 1966, to February 5, 1971, Anderson Co. had no employees and its affairs were managed by Mr. Anderson.

13. The original John P. Chase, Inc. ("Old Chase") was incorporated as a Massachusetts corporation on July 19, 1932.

14. The new John P. Chase, Inc. ("New Chase"), defendant in this action, was incorporated as a Massachusetts corporation on March 7, 1969.

15. On May 12, 1969, Old Chase was merged into New Chase. New Chase continued the business of Old Chase. New Chase is wholly owned by Continental Investment Corporation, a New York Stock Exchange listed company.

17. From October 6, 1966, to May 12, 1969, John P. Chase ("Mr. Chase"), owned at least 50.143% of the outstanding voting stock of Old Chase (Old Chase and New Chase are hereafter referred to jointly as "Chase Inc.").

18. From November 1, 1940, to February 5, 1971,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Chase Inc. was registered with the Securities and Exchange Commission ("SEC") under the Investment Advisers Act of 1940.

20. Six investment companies are now, and have been since they commenced operations, clients of Chase Inc.:

(a) The Chase Fund of Boston (a Massachusetts Trust formed April 7, 1958).

(b) Shareholders Trust of Boston (a Massachusetts Trust formed March 13, 1948).

(c) Income and Capital Shares, Inc. (a Massachusetts corporation, incorporated November 22, 1966).

(d) Chase Frontier Capital Fund of Boston, Inc. (a Massachusetts corporation, originally incorporated under a different name on January 26, 1968. This Fund acquired the assets of Chase Capital Fund of Boston, Inc. December 1, 1971).

(e) Chase Convertible Fund of Boston, Inc. (a Massachusetts corporation, incorporated September 9, 1971).

(f) Chase Special Fund of Boston, Inc. (a Massachusetts corporation, incorporated February 24, 1969).

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

(These six investment companies hereinafter are referred to collectively as the "Chase of Boston Group of Funds").

22. Chase Investment Services of Boston Inc. ("CIS") was incorporated under the name Chase Distributors Corporation on March 27, 1957. On December 31, 1970, pursuant to a plan of liquidation, the assets of its wholly-owned subsidiary of the same name ("CIS Subsidiary"), which had been incorporated under the name of Chase Investment Services, Inc. on February 2, 1964, were absorbed into the parent.

23. CIS is a wholly-owned subsidiary of Chase Inc.

25. Investment advice was furnished to accounts of between $25,000 and $500,000 in size by CIS Subsidiary between October 6, 1966, and December 31, 1970. On December 31, 1970, CIS Subsidiary, a subsidiary of a parent of the same name, was liquidated and the advisory business to such small accounts was continued by the parent.

26. Chase Fiduciary Associates of Boston is an entity composed of certain persons employed by Chase Inc., including Mr. Chase and Mr. Spindler. The only business of Chase Fiduciary Associates of Boston is to act as trustee.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

27. About 100 officers and employees of Chase Inc., Chase Investment Services of Boston, Inc., the Chase of Boston Group of Funds, and Chase Fiduciary Associates of Boston are located at 535 Boylston Street, Boston, Massachusetts and the business of these entities is conducted from that location.

28. The personnel of Chase Inc. consists of officers, account supervisors, investment analysts - research persons and clerical and bookkeeping personnel.

31. The account supervisors for the Chase of Boston Group of Funds work together as a single group and are known as the "fund management team." Some of the account supervisors in the fund management team also counsel or advise individual accounts of Chase Inc.

32. The institutional department is a separate division of Chase Inc. which division was established in or about December, 1968. Mr. Spindler is, and continuously from December, 1968, has been, in charge of this division. This division, although in the same building, is physically separate from the remainder of Chase Inc.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

33. From September, 1966, to February 5, 1971, a number of account supervisors performed a measure of the research function at Chase Inc.

35. Mr. Anderson graduated from Harvard College in 1951.

36. After his graduation and after two years of military service, Mr. Anderson was employed or affiliated as follows:

(a) Anderson Engineering Co. (1953 - June 1959);

(b) Lehman Brothers (February 1960 - July 1962);

(c) Self employed (August 1962 - November 1963);

(d) Lawrence H. Douglas & Co., Inc. (December 1963 - June 1967 on a commission or incentive basis);

(e) Salomon Brothers & Hutzler (July 1967 - March 1968);

(f) Legg & Co. and Legg, Mason & Co., Inc. (June 1968 - December 1970);

(g) Gordon, Kulman & Perry, Inc. (January 1971 - June 1972, on a commission or incentive basis);

(h) D. H. Blair & Co. (July 1972 -

SOUTHERN DIST[illegible]CT COURT REPORTERS [illegible]

January 1973, on a commission or incentive basis);

(i) Sterling, Grace & Co. (January 1973 - present, on a commission or incentive basis).

38. Mr. Anderson never has been registered with any regulatory body to handle transactions in marketable securities.

39. Mr. Anderson never has acted as an investment adviser.

40. Mr. Anderson completed in 1959 a 5-week course in investment banking.

42. At no time from September, 1966, to February 5, 1971, did Mr. Anderson have any beneficial interest (other than a remainder interest in the account of the Trust Under the Will of Lloyd D. H. Anderson) in any securities brokerage account, except as general partner of Anderson Co.

46. From April, 1965, to December, 1966, Mrs. A. Anderson's securities were held in an account with Cyrus J. Lawrence & Sons, a New York City based broker-dealer.

47. In that period Cyrus J. Lawrence & Sons furnished investment advice to Mrs. A. Anderson's account, which relationship was arranged by Mr. Anderson pursuant to a written power of attorney.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK, N.Y. 10007 (212) 791-4580

51. At about that time (September 1966) Mr. Anderson received from Chase Inc. a brochure entitled "John P. Chase, Inc. Investment Counsel."

52. This brochure was prepared and supplied to prospective clients by Chase Inc.

53. Mr. Anderson read the brochure.

58. In that letter (October 5, 1966) Mr. Anderson stated that Anderson Co. had in the past "used varying forms of leverage" and "would be willing to make short sales."

59. On October 6, 1966, Mr. Chase wrote Mr. Anderson and he enclosed a proposed letter agreement which he had executed on behalf of Chase Inc.

61. Subsequently Mr. Anderson questioned certain terms of the proposed agreement. His questions are stated in his letter of November 14, 1966, to Mr. Chase.

62. With the November 14, 1966, letter, Mr. Anderson returned to Mr. Chase the letter agreement, which Mr. Anderson had counter-signed, dated as of November 1, 1966.

66. Chase Inc. assigned Account No. A-24A to the account of Mrs. A. Anderson; it assigned Account No. A-24C to the account of Anderson Co.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

67. Herbert Bancroft (now deceased) was the account supervisor for the Accounts. Mr. Chase was the so-called back-up supervisor. During Mr. Bancroft's tenure as account supervisor Mr. Chase approved all recommendations prior to their being made to the Accounts.

68. Sometime between October 6, 1966, and December 1, 1966, Chase Inc. set up the so-called "Black Book" for the Accounts.

69. The front page of the section of the Black Book relating to Mrs. A. Anderson's account recites a portion of the objectives of that account.

71. In the Chase Inc. system the Black Book was the basic repository of information regarding the Accounts; it was the primary source to which the account supervisor referred for information on the Accounts.

72. The purpose of the front pages reciting portions of the objectives of the Accounts was to give a supervisor who had to act on the Accounts in the absence of the assigned account supervisor a quick-reference on objectives.

75. The Bible Sheet contains basic information about the account and its owner and it is filed by the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

assigned account numbers in a Master Bible Sheet binder.

78. On that Bible Sheet the space for "Book Value Date" is blank.

80. On the Bible Sheet for the Accounts, the space for "Primary Account Objective" is filled in with the words "Mr. Douglas S. H. Anderson."

83. By letter of November 17, 1966, Mr. Anderson delivered to Chase Inc. a booklet which Mr. Anderson had prepared, entitled "The Anderson Company."

84. The booklet contained financial information (including a summary 1966 balance sheet and income statements) for Anderson Co., and it described proposed borrowings of Anderson Co. in the amount of $225,000 as against an actual net worth of $143,900 and a pro forma net worth of about $210,000.

85. On February 26, 1970, Mr. Anderson voluntarily delivered to Chase Inc. a 1969 balance sheet for Anderson Co., which showed current loans of $39,706.89 and two separate long-term mortgage obligations in the amount of $113,813.08 secured by marketable investments and real property as against a net worth of about $173,000.

86. At no time did Mr. Anderson refuse to provide

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Chase Inc. with information regarding the financial affairs of Mrs. A. Anderson or Anderson Co.

91. Herbert Bancroft was the supervisor for the accounts from November, 1966, through April, 1967.

92. An internal initial appraisal of the accounts was done as of October 6, 1966, and initial recommendations were communicated in writing on or about December 1, 1966.

93. In April, 1967, Richard Spindler became the supervisor for the accounts, and Mr. Chase continued as back-up man.

95. In this period (opening of accounts to second-half 1967) these forms were mailed to Mr. Anderson. They were used either to initiate recommendations or to confirm recommendations which previously had been made by telephone.

97. The approximate amount of the additional funds was $218,850.

102. Those appraisals (October 6, 1966) were for internal use only and were not sent to Mr. Anderson.

104. The program was long-range in that it looked ahead several months.

105. A portion of the program is described in

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Mr. Bancroft's letter of December 1, 1966.

106. Some or all of Mr. Bancroft's handwritten work sheets and notes regarding the purchase and sale program were preserved at Chase Inc.

107. The work sheets and notes bear the "OK" of Mr. Chase.

123. In November, 1968, Mr. Spindler was promoted by Chase Inc. He was made Executive Vice-President of Chase Inc. and was put in charge of a new division referred to as the "institutional department."

124. During December, 1968, Henderson Inches replaced Mr. Spindler as the supervisor for the Accounts.

125. Mr. Inches remained the account supervisor through February 5, 1971, the date as of which termination of the Accounts occurred.

126. Mr. Inches had less experience as an account supervisor than either Mr. Bancroft or Mr. Spindler.

128. Mr. Chase assigned Mr. Inches to the Accounts.

130. During Mr. Inches tenure as supervisor for the Accounts, Mr. Spindler had responsibility as first back-up man and Mr. Chase had responsibility

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

as second back-up man.

130a. In the period from December, 1968, through February, 1971, Mr. Inches reviewed the Black Book on the Accounts not less than twice per week.

130c. During the same period Mr. Chase reviewed the four-month appraisals and cover letters for the Accounts.

134. These lists ranked each security on a scale from "1" to "4", and later to "5", and contained per share earnings for the last year and projected per share earnings for two years.

152a. In a letter to Mr. Anderson dated March 20, 1969, (in connection with the Chase Inc. -- CIC acquisition) Mr. Chase stated there would be "no change in the method of handling your account and we look forward to a continuing relationship with you."

161. Chase Inc. did not discourage account supervisors from including investment objectives and the financial status of unnamed accounts, in connection with discussions relating to securities or securities transactions.

176. In a letter dated March 4, 1971, Mr.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Inches stated:

> "From your recent conversation with John Chase, you can understand his reluctance to have short positions in the account especially when you may be running short of a stock that one of our funds may be buying."

180. By letter dated March 4, 1971, Mr. Inches stated that he regretted Mr. Anderson'd decision to terminate.

181. In the period from October 6, 1966, through January, 1968, Chase Inc.'s fees for the Accounts were calculated on the following basis:

> "At the end of each four-month period of your services hereunder, one-sixth of one per cent of the then fair market value of the account up to and including $500,000, plus two-fifteenths of one percent of the then fair market value in excess of $500,000. In any event, we agree to pay you not less than $333.33 for each four month period of services rendered by you."

182. As of February 1, 1968, and through February 5, 1971, Chase Inc.'s fees for the Accounts were raised and were calculated on the same basis, except that the annual minimum fee was raised to $2,500.

183. The Accounts paid all fees charged by Chase Inc.

190. From October 6, 1966, to February 5, 1971, Chase Inc. did not have custody of the securities in the Accounts. Securities purchased by the Accounts

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. (212) 488-[illegible]

pursuant to Chase Inc. recommendations were held in the custody of Mr. Anderson, the brokers for the Accounts, or agents for Mr. Anderson or the Accounts.

- - -

MR. DEVINE: The plaintiff calls Douglas Anderson as its first witness, your Honor.

D O U G L A S S. H. A N D E R S O N, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVINE:

Q Mr. Anderson, what is your present employment?

A I am Director of Export Development at Sterling Grace & Co., Inc.

Q In the second half of 1966 did you have responsibility for the investment of certain assets, funds?

A Yes.

Q Who owned the funds for which you had that responsibility?

A The Trust, under the Will of my father, my mother, Alice S. E. Anderson, and the Anderson Company.

Q Will you tell us very briefly what the Anderson Company was in 1966?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A It was a continuation of a partnership started in 1952. Originally it was comprised of my father, my mother and myself then involved in the engineering and manufacturing business in Cambridge, Massachusetts.

Q In 1966 what was the business of the Anderson Company?

A Principally an investment entity.

Q You were the general partner at that time?

A Yes.

Q In August of 1966 approximately how much was owned by the Anderson Company which were investment assets which were available to be invested?

A From recollection, about seventy, eighty thousand dollars in marketable investments.

THE COURT: Do you have a breakdown of what that consisted of? I didn't see a breakdown in any of these proposed findings. I would like to know just what they had on hand and what kind of securities they were investing in before they ever got to the Chase Company.

MR. DEVINE: Your Honor, I would offer at this point a document which has been marked as Plaintiff Exhibit 4 for identification, if there is no objection. I think one of the attachments to this document will provide the information that you are requiring.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7 4580

Q In August of 1966, approximately how much was owned by your mother in the nature of investable assets?

A From recollection, about $110,000, $120,000.

Q What is your mother's age at this time?

A Sixty-eight. Meaning today?

Q Today, yes, sir. Has she been employed within the last twenty years or so?

A Never, except as a silent, in a sense, partner in the partnership, Anderson Company or its predecessor.

Q In August of 1966, how were the investable assets of your mother invested? By that I mean, did she have a brokerage account at that time?

A They were subject to an advisory agreement with Cyrus J. Lawrence & Son, which is a brokerage firm down town in Manhattan.

Q Who made the investment decisions for your mother at that time, again, August of 1966?

A Cyrus Lawrence would originate the ideas with respect to changes and call me and ask me if they seemed all right, and I would say generally I would approve them.

Q Focusing on the Anderson Company now, still in August of 1966, who made the investment decisions for the Company?

A I would.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Did the Company have a brokerage account at that time?

A Yes.

Q In the second half of 1966, did there come a time when you spoke with John Chase?

A Yes.

Q When first during that six month period at the end of 1966 did you speak with him?

About September, some time in September of 1966.

Q Was that personally or by telephone?

Q Initially by telephone, and subsequently I went to see him in his office in Boston.

Q With respect to the telephone conversation, will you tell us what was said and by whom?

A I think I indicated I felt I had an investment problem, by me, and said I would like to talk with him about it, and an appointment was set up.

THE COURT: I would like to get this witness's total background at the present time and his financial experience, if any, and the degree of it so as to put his testimony in its proper perspective.

Would you bring that out? I know there have been findings on the thing, but I would like to hear it all here.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Would you tell us, Mr. Anderson, briefly but as completely as you can your background, let's say, from college through the present time?

A Well, I graduated from Harvard College with a Bachelor of Arts degree in 1951, went on active duty in the Korean emergency as an ensign, USNR, as a result of a commission accorded me upon graduation.

Q What financial or accounting courses did you take at Harvard?

A I took none, sir. I did not go to graduate school. This was an undergraduate degree. Upon release from the Navy in about February of 1953 I went into a family engineering and manufacturing business, the name of which at that time was Anderson Engineering Company, a general Massachusetts partnership which had been established by my father during during the time I was in the service, in May of 1952. I was continuously involved in that partnership until about June of 1959, when I --

THE COURT: What was the area of your involvement?

THE WITNESS: Well, I was involved in cost accounting, I did some sales work, I did some design work in connection with concrete batching plants and sand and gravel plants. The company manufactures snow plows and sand spreaders, material for asphalting of roads. I

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

talked to dealers and in a general way as the only offspring I was being groomed to head up the company at some point, and so I had a rather wide knowledge imparted by my father of that business and his thinking.

THE COURT: Then you moved on to Lehman Brothers?

THE WITNESS: No, sir. I left Anderson Engineering in June of 1959 and didn't know really what I was going to do. I had reached an impasse as far as the future was concerned, I felt, with my father, and I attended a course given by the University of Vermont, here in New York, which I had noticed in the New York Times, and which related to the economics of capital formation, I believe, the institutions and organizations that comprised the financial community.

During the period of that four week course, I learned of an additional one out at Northwestern, given by the Investment Bankers Association of America principally for security salesmen, and I volunteered and was elected or selected to attend it. It was a four or five week course in various brokerage and other security analysis type of thing.

From September through about January of 1960 I sought employment in the investment banking field, and was hired in February by Lehman Brothers in their Industrial

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Department as an associate.

THE COURT: What was the Industrial Department?

THE WITNESS: It was, I guess, similar to what might be called an Export Finance Department with other security houses, if that is responsive to your question, sir It dealt primarily with industrial companies as opposed to finance companies, or oil companies which were handled otherwise at Lehman Brothers.

THE COURT: What did you do?

THE WITNESS: I worked principally on private placements, public offerings, venture capital, merger and acquisition, for about two and a half years.

THE COURT: Then what happened?

THE WITNESS: As a result, I guess, of the May 1962 market break, Lehman Brothers reduced its employment by about 16 per cent, I subsequently inferred, principally on what might be called a last in, first out basis, and I became dissociated. I worked independently for about a year and a half in conjunction with another chap who remained at Lehman Brothers, and it was a very unusual situation in which we worked on a number of private financial placements, one of which was closed and two of which we were paid, and then I moved to a small member organization that had been recently started by a friend

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

of mine named Larry Douglas. The chap from Lehman Brothers moved over there and joined me.

THE COURT: What was the name of that business?

THE WITNESS: It was a very small brokerage business.

THE COURT: Commission house?

THE WITNESS: Yes, sir. We were added to work on a straight commission basis on investment banking, where our background had been. I was never registered as a broker. I stayed there until Lawrence Douglas's business and assets were acquired by Legg & Co. in about May of 1967, at which point I was sent to talk to Salomon Brothers to go to their Export Finance Company, and Legg expressed some interest in my joining them. I chose to go back to a major firm and stayed at Salomon Brothers for about nine months, at which time --

THE COURT: What did you do there?

THE WITNESS: I was unemployed for about three months and then I moved to Legg and Co.

THE COURT: What did you do at Salomon Brothers?

THE WITNESS: I was involved in several export finance transactions and the balance of my time was spent summarizing two pages, generally legal sheets, of public offerings, generally of debit, that Salomon Brothers was

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK, N.Y. CO 7-4580

manager of co-manager of, or possibly a major in the underwriting group.

THE COURT: When you say you were involved in export financial transactions, what was your involvement, the nature and scope of it?

THE WITNESS: Well, the first one I can recall was going up to Montreal with a representative of Halsey-Stuart to write a prospectus for the initial public offering of the Montreal School System, which had never been done, that type of offering, in the United States, a school commission, in Canada before.

I was involved in closing a transaction for the benefit of Holiday Inns on some notes that were issued with a Gulf Oil guarantee. I introduced a number of commercial paper prospects to Salomon Brothers.

I worked on, and developed, potential sale of a small feeder airline, which was not closed.

THE COURT: Then you went back to Legg?

THE WITNESS: Yes, sir, about three months after I left Salomon Brothers.

THE COURT: What was Legg's business and your participation in it?

THE WITNESS: Well, Legg's business had in the past generally been one of a brokerage aspect and one of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

the partners there was interested in developing export financial activities, and the firm was then based in Baltimore. I was put in charge of a so-called one man department in New York involving so-called new business. I was involved in prospectus work and prior recommendations to the partners on a public offering of a small electronics company in Maryland in which Legg had a small, insignificant stock position. I was involved in the acquisition by U. S. Industries of a finance company in Baltimore which Legg initially introduced to me as a private placement candidate, after making a private placement proposal to the company, and was persuaded to become an acquisition candidate, and thereafter in conjunction with the Morgan Guaranty Trust Company a transaction was worked out with U. S. Industries.

I worked on a number of other situations at the time which were not closed.

THE COURT: What was your next step?

THE WITNESS: In November of 1970 Legg terminated my employment, it having previously, in August of 1970, consolidated with Mason & Company, of Washington, to form a corporation, Legg, Mason & Co., Inc. Under the circumstances there was some prospective business that I had originated when I was at Legg, or

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Legg, Mason, that with some persuasion they agreed to release to me, and I moved to a small brokerage firm, Gordon, Kulman & Perry, Inc., and endeavored to resolve that situation, unsuccessfully.

In July of 1972 I moved because of and with Larry Douglas -- because of his prior association -- to D. H. Blair & Co. and was given the title of Vice President of Export Finance.

THE COURT: What was the business of Blair at that time?

THE WITNESS: Blair, as I think all of these companies were at the time, was a member of the New York Stock Exchange.

THE COURT: Who did they clear through?

THE WITNESS: I don't know, sir. I was never involved in any brokerage transaction there I don't know whether they had their own man down on the floor or they cleared through somebody else, frankly.

THE COURT: In all events, you were in charge of what department?

THE WITNESS: I wasn't in charge. I had the title of Vice President of Export Finance.

THE COURT: What were your activities under that title?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: Endeavoring to generate mergers, acquisitions, private placements, venture capital, public offerings.

THE COURT: Then you moved on in January of 1973 to your present --

THE WITNESS: Sterling Grace & Co., Inc.

THE COURT: What is your title and activity there?

THE WITNESS: My title originally was Vice President of Export Development, and very recently was changed to Director of Export Development, and my activities there are broadly in the same area, private placements public offerings, mergers and acquisitions, public capital. In no job since Legg I never received a salary.

THE COURT: You worked for nothing?

THE WITNESS: On an incentive and commission basis.

THE COURT: Your compensation is on a commission basis rather than salary?

THE WITNESS: That's correct.

THE COURT: All right.

BY MR. DEVINE:

Q You testified earlier, Mr. Anderson, that you had a telephone conversation with Mr. Chase in, I believe you said, September of 1966, and an appointment was set

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

up at that time. Did that appointment take place?

A Yes, sir.

Q When did you meet with Mr. Chase with respect to that appointment?

A I don't remember the exact date. It was I think in middle or late September.

Q Of 1966?

A Yes.

Q Where did that meeting take place?

A In his office, Boylston Street, Boston.

Q Who was present at that meeting?

A I believe just John Chase.

Q Will you tell the Court as completely as you can recall what was said at that meeting and by whom it was said?

A When I got there I believe I explained I had a problem in that my father had died October 3, 1964, and much of our family assets were tied up in non-marketable entities. My father had hoped that the executives of the engineering and manufacturing corporation in Cambridge wo would be able to generate funds and be interested in acquiring these private assets gradually as funds could be made available to them, but that this also resulted in the elimination of the benefits of my mother's income from

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

my late father's salary, and that I was hopeful that something could be worked out on an investment counseling basis so that we might benefit from what I felt to be, and gathered to be, the flow of information from brokers about companies and earnings changes, and so forth, to the large reservoirs of funds which are invested and which need to know about these changes to avoid serious losses. Several things I recalled mentioned during that meeting by Mr. Chase, and one of which related to the lack of high dividend income, ordinary dividend income available from many securities, and so the concept, which I thought was quite attractive, of using part of capital gains, long-term capital gains as generated, and treating a portion of that as income seemed to make a lot of sense to me. In addition he spoke of the desirability of investing in the securities of issuers where the earnings growth rate based on estimated earnings was in excess of the price earnings multiple, which also made a lot of sense, and the desirability of remaining in securities of issuers where at least a 15 per cent estimated growth rate maintained. This is something that as a formula, if you will, appealed to me, in a sense, because of the continuous type of monitoring I gathered would be involved in securities which were involved in their

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

recommendations, and I was not sure that our investment advisory -- in fact I didn't think our investment advisory relationship at Cyrus Lawrence offered the continuous type of supervision, and my own activies at Douglas were such at that time that I did have the time to devote to monitoring even with limited earnings information to maintain estimated earnings growth and price earnings, and watch for new situa-tions as they were developing, all of which I understood, from a brochure, from reading a brochure that was at that time handed to me, would be involved in the investment counseling of our accounts.

Q Let's try and focus on the conversation rather than your mental processes at that time. What else, if anything, can you remember you saying to Mr. Chase, or Mr. Chase saying to you at that time?

A I think I may have described the approximate size of the accounts, and I gathered that he might be willing to proceed with our accounts if the total was something of the order of magnitude of half a million dollars, and I believe I suggested -- because each of the entities were not half a million dollars per entity, and perhaps for fee purposes the three accounts could be lumped and, one way or another, we would manage to try to get up to half a million dollars.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Why did you go to Chase in the first place?

THE WITNESS: I was up in Boston in connection with the first stage of selling family assets. John Chase had been my hockey coach at Harvard, and I was aware that his company managed at that time two mutual funds, Shareholders Trust of Boston, which was less capital gain oriented, I guess, than the Chase Fund of Boston, and because of my awareness in the past of the flow of ideas and earnings information to those who managed substantial amounts of assets by brokers looking for commission business as a result of such ideas and write-up that they would send to such organizations --

THE COURT: What did you do, call him up, write him a letter?

THE WITNESS: I called him on the telephone, I believe.

THE COURT: And invited yourself over. Is that what happened?

THE WITNESS: I don't think I invited myself over.

THE COURT: What did you say to him at that time? You didn't talk about hockey.

THE WITNESS: No.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: How did you get there?

THE WITNESS: I told him, to the best of my recollection, that I had a problem of some kind with a lot of non-marketable things and would like to talk to him about investment counseling and that was his business, and I believe he invited me to come over there.

THE COURT: All right.

BY MR. DEVINE:

Q Do you recall anything else being said by you or by Mr. Chase at this meeting in September of 1966?

A Not particularly at this time.

THE COURT: Did you tell him, by the way, that your family interests were being advised by Cyrus Lawrence & Son?

THE WITNESS: It was not the complete family interest, sir, only my mother's account.

THE COURT: Yes, but did you tell him that?

THE WITNESS: I don't recall, sir, frankly.

THE COURT: Did you tell it to him at the first interview?

THE WITNESS: I don't recall. I may or may not have. I am sorry.

THE COURT: You told him that you were in a situation where the family interests and the interests of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Anderson Company were in illiquid position and you wanted help with investment advice?

THE WITNESS: Investment counseling.

THE COURT: But you didn't tell him that you were already getting that kind of advice from Cyrus Lawrence and Company?

THE WITNESS: As far as the partnership is concerned, and as far as the trust is concerned, we were not, sir.

THE COURT: You didn't tell him anything at all about receiving information from Cyrus Laurence and Company?

THE WITNESS: I don't recall. I may have.

THE COURT: What leads you to add that you may have?

THE WITNESS: I don't know why I would have particularly withheld it.

THE COURT: Don't you think that you might have said that you were dissatisfied with the counseling you were getting and that you were seeking new or different or better counseling?

THE WITNESS: I don't recall everything that was said in that meeting, sir.

THE COURT: All right.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

BY MR. DEVINE:

Q I show you Plaintiff Exhibit 3 for identification and ask if you have ever seen that before?

A Yes.

Q When did you first see it?

A I believe John Chase handed it to me in our first meeting.

Q Is that the September 1966 meeting in Boston?

A Yes, sir.

Q Did there come a time when you read Plaintiff Exhibit 3?

A Yes.

Q When was that, for the first time?

A I believe after I left his office and went home to my mother's house, where I was staying at the time.

Q Did you take that document with you when you left?

A Yes, I did.

Q When next did you speak to John Chase?

A I would guess in early October, probably a week or ten days or two weeks later.

Q 1966?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Was that a telephone conversation or a personal meeting?

A I believe it was a telephone conversation, probably from New York. I am not sure, but it was telephone.

Q Do you recall what was said in that conversation and by whom?

A I believe I indicated that I had looked over the material that he gave me and that I was interested in proceeding further with the situation.

MR. DEVINE: Your Honor, did I hand Plaintiff Exhibit 4 to you?

THE COURT: Yes.

Q Mr. Anderson, you have Plaintiff Exhibit 4, and I ask did you write that letter?

A Yes.

Q Did you cause it to be sent to Mr. Chase?

A Yes.

Q I show you Plaintiff Exhibit 5 and ask if that is a letter that you received from Mr. Chase?

A Yes.

Q Was there an enclosure with Plaintiff Exhibit 5 when you received it?

A Yes.

Q I show you Plaintiff Exhibit 6. Is that the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

enclosure?

A I believe so.

Q Was Mr. Chase's signature on Plaintiff Exhibit 6 when you received it?

A Yes.

Q Does your signature appear on Plaintiff Exhibit 6?

A Yes.

Q Did you return Plaintiff Exhibit 6 to Mr. Chase?

A Some time later, yes.

Q Did you include a cover letter when you returned it?

A Yes.

Q I show you Plaintiff Exhibit 7. Is that the cover letter?

A Yes.

Q At the bottom of Plaintiff Exhibit 7 there is some handwritten material. Did you place that handwriting on the bottom of that letter?

A Yes.

Q Do you recall whether you placed it on that letter before or after you had sent the original to Mr. Chase?

A After I had sent the original to Mr. Chase.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you recall the occasion when you placed the handwriting on that document?

A From looking at it, it seems that he may have called in my absence from the office and I guess may have left a telephone number at which I could return the call, which I did, and I made a note at that time, as is shown there on the letter.

Q Would you read the handwriting, please, so that the record will be clear as to what it says?

A It is a date in numbers, 11/16/66. It says "At 11:40 a.m from 425-1450," which is Lawrence Douglas's telephone number, "to John P. Chase at 633-3229. He told me that his intention is the same as above but the language is the SEC's and can't be changed."

Q Does that conclude the handwritten material?

A Yes -- well, up in the left hand corner I guess I pencilled it, some other time -- I don't know, because there is no date on it, "Ask John Chase re recording my understanding with him attached to letter agreement."

Q That is also your handwriting?

A Yes.

Q Have you given us your complete recollection of the telephone call with Mr. Chase on that date in November? Do you recall anything else being said by you

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

or by him at that time?

A I don't presently recall anything else.

Q Looking back at Plaintiff Exhibit 3, which is still in front of you, had you read that exhibit before you signed and returned to Mr. Chase Plaintiff Exhibits 6 and 7, which I think are still in front of you also?

A Yes, I had read it.

Q Did you rely upon that brochure, Plaintiff Exhibit 3, in returning the letters to Mr. Chase?

A Yes, I did.

Q Please tell the Court as precisely but as briefly as possible, what aspects of Plaintiff Exhibit 3 you relied upon?

A Well, it indicates that John Chase was incorporated in 1932 to do all things which are necessary or incidental to the conduct of the business of investment counseling, that their clients are served best by rendering service of a highly personal nature, tailored to their individual investment needs and objectives.

Q It is not necessary to read from the document, Mr. Anderson. It will speak for itself. I only ask that you highlight any particular portions of it which you rely on, let's say, more than others, without necessarily reading it into the record.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A They indicated at that time that they had about 300 accounts with $400,000,000, about a million and a third on average per account, that they didn't accept accounts having a value of less than $200,000. They talk about maintaining flexibility, counseling accounts according to their individual needs, objectives and restrictions. Apparently when a preponderance of factors are favorable equity holdings are increased; when the analysis indicates an unfavorable outlook, the common stock is reduced with a corresponding increase in bonds or short term securities to establish common stock by increasing reserves. When they begin the management of a client's account, a written analysis of its holdings is prepared and specific purchase and sale recommendations are submitted. The account is placed on continuous supervision and recommendations for change are submitted to the client as changing conditions may dictate. Each security is held under constant review to ascertain whether it continues to contribute. Performance of the account would be discussed in a written report reviewing the performance of the account which will be provided at the end of each 4-month period, as well as discussing in some detail the trends which they believe are likely to govern the action of the security markets during the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

coming months, and things of that nature.

Q In signing and returning to Mr. Chase Plaintiff Exhibits 6 and 7, did you rely upon any statements made to you by Mr. Chase at any earlier time?

A Well, I understood that in addition to what is contained in this investment counseling brochure, that the aspect of purchasing securities with a lower price earnings ratio than the growth rate based on estimated earnings would be applied to our accounts and I had not received any indication in any meeting that mutual funds would be treated in any way differently than our accounts. So I had no reason to suspect things would be done in mutual funds that were contrary to the normal things that would be done in our accounts.

THE COURT: In other words, you are telling me that you expected that the investment policy for these accounts was to be that for the mutual funds?

THE WITNESS: Well, there were two mutual funds at that time --

THE COURT: Were you expecting the defendant to give counseling in the same way as they had given to the mutual funds?

THE WITNESS: To the mutual funds and large private accounts.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Did you consider investing in a mutual fund instead of going to an investment counsellor?

THE WITNESS: No, because I didn't think a mutual fu would be responsive to the trust need, where mutual funds, say a small cash fund, they distribute the capital gain, but that trust was not the kind that could distribute the capital gain to my mother.

THE COURT: When you came to see the defendant and spoke to Mr. Chase, did you have occasion to renew old acquaintances and go over what had been happening since you got out of Harvard?

THE WITNESS: We probably touched briefly on it, yes.

THE COURT: Did you tell him you had gone into the securities business?

THE WITNESS: I believe I did.

THE COURT: What did you tell him about what had happened to you from 1951 up until 1966?

THE WITNESS: I probably very briefly summarized it, as I may have here, sir. At that time of course I had only been at Lehman Brothers and Lawrence Douglas. I think I may have mentioned at some point at Lawrence Douglas someone asked me to do a write-up on KLM securities, which I did, but I am sure I told him I had

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

been involved in the family business prior to going into the investment banking business. At any rate, my resume was contained in a brochure that I sent him in the middle of November.

THE COURT: Do we have that marked?

MR. DEVINE: Yes. I am coming to it now, your Honor.

Q In October of 1966 did you provide Chase, Incorporated, with information with regard to the Anderson accounts?

A I believe I attached to the letter here detailed information with respect to my trust as at September 30 and with respect to the partnership as of July 31.

Q What document is it you are looking at and that you have reference to?

A This is Plaintiff Exhibit 4 for identification.

Q I show you Plaintiff Exhibit 8 for identification. Did there come a time when you caused that to be delivered to Chase, Incorporated?

A Yes.

Q Do you recall when it was that you caused that to be delivered?

A I think I sent it to him shortly after I returned the contract between us.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. DEVINE: Your Honor, that is the document to which Mr. Anderson referred a minute ago. The resume, I think, is toward the back.

Q Was this information, Plaintiff Exhibit 4 and Plaintiff Exhibit 8, the two documents before you, requested by Chase, Incorporated, or did you send this voluntarily?

A I think the material as far as Plaintiff Exhibit 4 was requested, a picture of the accounts, status of the accounts, whatever, and there had been discussion of raising funds privately in my October 5th letter, and I think previously. So when the brochure was finished, I sent that in for his perusal, I think.

Q When you say the brochure, do you mean Plaintiff Exhibit 8?

A Yes.

Q Do you recall providing any other information other than these two documentary exhibits to Chase, Incorporated, at about that time, the end of 1966, with respect to the Anderson accounts?

A I think that some time after October 31, I provided a revised statement of the Anderson Company account because we were operating on a fiscal year and one quarter of it ended on October 31, 1966.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Was that requested or did you volunteer it?

A I don't recall. It seemed the logical thing to do to update the information previously requested.

THE COURT: Did this curriculum vitae of yours have anything at all to do with the Anderson Company?

THE WITNESS: Well, as a general partner, it provided material on me, and so it seemed appropriate to include it, sir.

THE COURT: Were you seeking employment at that time?

THE WITNESS: No, but I was providing background, and I think in most selling memoranda seeking to raise funds, background information is provided about the people who would be involved.

THE COURT: Were any copies of this brochure on the Anderson Company distributed to anybody else other than Chase?

THE WITNESS: Yes, sir, quite a number.

THE COURT: Did those copies also include your curriculum vitae?

THE WITNESS:: Yes, sir.

THE COURT: So that this was just an example of what you had been distributing regularly?

THE WITNESS: No, no, I don't believe the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

distribution of that started perhaps until the end of November, and this was an initial copy, I believe it was printed, probably fifty or a hundred copies, and provided to the various potential sources of loan funds described.

THE COURT: All right.

BY MR. DEVINE:

Q In or about October of 1966 did Chase, Inc. request any information which you were unable or unwilling to give with respect to the Anderson accounts?

A Not that I recall.

Q At any subsequent time up through March of 1971 do you recall ever being asked for any information about the accounts, being asked by Chase, Incorporated, which you were unable or unwilling to provide?

A Not that I recall.

Q Did there come a time when you provided Chase, Incorporated, with authority to enter securities orders on behalf of the Anderson Company account?

A Yes.

Q When was that?

A I believe in January of 1967.

Q I show you Plaintiff Exhibit 9, and I ask if that is a copy of the authorization to which you refer?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

these brokers began to provide Chase, Incorporated with duplicate monthly statements and trading confirmations with respect to the Anderson Company account and your mother's account?

A Yes. I think when it was requested of me. Whether they followed it all the time, I don't know, because there was something in March, I think, where they didn't apparently receive something which I sent up to them --

Q March of what year?

A 1967. It was the intention to have them receive duplicates of all confirmation slips and monthly statements.

Q Do you have any knowledge as to whether the brokers began to send duplicates to Chase, Incorporated?

A I would guess in December of 1966.

THE COURT: Duplicates of what?

THE WITNESS: Confirmations of transactions and duplicates of monthly statements.

THE COURT: Were those confirmations of the transactions that they had counselled, or confirmations of the transactions in the account?

THE WITNESS: They were confirmations of all transactions in the account.

THE COURT: And monthly statements of all

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

transactions?

THE WITNESS: A monthly statement, yes, sir, of all transactions.

Q After you returned the letters, Plaintiff Exhibits 6 and 7, to Chase, Incorporated, did there come a time when you received an investment recommendation from Chase, Incorporated?

A Yes, we received quite a number of them, initially, I think, by telephone, about December 1st of 1966, and they were confirmed in writing.

THE COURT: Were all investment recommendations during the course of your dealings with this defendant confirmed in writing?

THE WITNESS: No, sir.

THE COURT: Was there any criterion as to what should or shouldn't be confirmed?

THE WITNESS: I don't know what their criteria might have been, sir.

THE COURT: At any event, the initial portfolio changes were confirmed in writing?

THE WITNESS: Yes, sir.

BY MR. DEVINE:

Q I show you Plaintiff Exhibit 11. Are the documents -- there are four pages here -- are these

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

documents the recommendation forms which you received on or about December 1, 1966?

A With respect to these two accounts, yes, sir.

Q The Anderson Company and your mother's account, is that correct?

A Yes.

Q And I show you Plaintiff Exhibit 12 and ask if that is a letter which covered those recommendation forms?

A Yes, sir.

THE COURT: I want to get the thrust of your inquiries as to the changes of brokerage firms, Mr. Devine. There were changes, apparently, of brokerage firms in 1966. Were those suggested or dictated by the defendant?

THE WITNESS: No. There was one change in 1966, and that was from Cyrus Lawrence to Moseley, I believe, only for my mother's account. The securities had been held --

THE COURT: Did they request you to make that change?

THE WITNESS: Not that I recall, but --

THE COURT: Did they suggest Moseley?

THE WITNESS: No. That is where the other two accounts were.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: When the change came to Legg, where you were located, of the Anderson Company account, did they suggest that?

THE WITNESS: No. It was an account of Douglas and when Legg acquired Douglas's assets the account went there. I went to Salomon Brothers at that time.

THE COURT: At all events, they had nothing to do with selecting the broker?

THE WITNESS: No, and I don't recall hearing of any desirable reason on theri part for wanting to select the broker.

BY MR. DEVINE:

Q After you received Plaintiff Exhibits 11 and 12, which are the recommendation forms and cover letter, did you take any action as a result of receiving those documents?

A Yes. I discussed them on the telephone with Mr. Bancroft, who had become involved in the interim with our account.

Q Do you recall when that discussion occurred?

A Promptly, I think, upon my receipt of the recommendations.

Q What was said at that time and by whom?

A Well, between the time of receiving the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

recommendations and my subsequent conversation with Mr. Bancroft, I had looked in Standard & Poor's export records volumes and seen in a number of cases that there were convertible securities which I then in conversation with Mr. Bancroft asked -- of the same issuer -- whether they might not be just as appropriate.

Q What did he say to you, if you recall?

A I am not sure he gave me an immediate answer but, at any rate, within the next few days most all of the securities were purchased in this revised form.

Q Were the sales which were recommended on these forms made within some period of time after your receipt of these forms?

A I think all but two in my mother's account, from recollection, and all but one, I think in the Company.

Q Focusing on the period from December 1 of 1966 through April of 1967, in that period did you receive investment recommendations from Chase, Incorporated, in addition to the ones that you have in front of you?

A Yes.

Q Do you recall on approximately how many occasions in that period recommendations were received by you?

A Half a dozen, or eight, or something. I don't have an itemization of them.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. (0 7 4580

Q Will you describe for the Court the routines, the procedures followed in that time period with respect to Chase, Incorporated giving you investment recommendations?

A I think generally they would try to reach me on the telephone first. In a number of cases when I was not available a letter would be written to me. I recall one that was sent out the day after a written appraisal of the three portfolios as of approximately February 6, 1967. Occasionally maturities would cause recommendations, it appeared to me, but I think in just about every case subsequent to the telephone conversation there would be issued these red or green, or both, purchase and sale recommendation forms.

Q In that period --

THE COURT: Then what would happen? You were asked to describe the procedure. What would happen when you got these recommendations and forms, mechanically?

THE WITNESS: Generally I would arrange to have the order entered through our trading desk.

THE COURT: How did you do that?

THE WITNESS: I think I spoke to the trader.

THE COURT: And you placed the order and the limit on the order and the terms of the order?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: No. The limits, when they were given, were provided on these sheets, and I guess provided over the telephone, which these sheets confirmed.

THE COURT: The limits were not given, you mean they were recommended?

THE WITNESS: Yes.

THE COURT: Then you placed the actual order?

THE WITNESS: The trader, I think did, sir.

THE COURT: You were the one who authorized the trader to place the order in the manner in which the order was placed and executed?

THE WITNESS: I believe so, yes, sir.

THE COURT: Then you would receive a confirmation?

THE WITNESS: Yes, sir, and I understood that the Chase organization would.

THE COURT: What if anything did you do when you received these counseling advices to satisfy yourself that you wanted to authorize such transactions?

THE WITNESS: Well, in the case of the trust, I would communicate with my co-trustee.

THE COURT: And discuss it with him?

THE WITNESS: And tell him what had been recommended to me for the trust, and ask him if this was, in his opinion, appropriate.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: And you would discuss it with him?

THE WITNESS: Yes, sir -- well, I would discuss the recommendation. I did have necessarily a great deal of background on the issuer that I would discuss with him. In some cases they would send a one-page sheet that would provide a concise history of the company, its earnings, their estimate of the future earnings, but this was not provided in every case -- in fact, less than a third or quarter of the cases such summary sheets were submitted to me.

THE COURT: You were a subscriber, weren't you, to the Investment Reports?

THE WITNESS: I subscribed to it -- the partnership subscribed to the Value Line, but the earnings estimates that Value Line would have were not the basis for the recommendations by the Chase organization, because they had their own --

THE COURT: But what did you do to satisfy yourself that you wanted to go ahead for the Anderson Company or for your mother in placement of the orders?

THE WITNESS: Generally not very much. If you are asking whether I tried to separately verify the earnings estimates, which in many cases I did have their earnings estimates, I would say I didn't.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: How about satisfying yourself -- were all of these names that were being handed to you for investment consideration familiar names of companies and securities?

THE WITNESS: They were generally listed or, in a few cases, unlisted securities that were of significant or substantial companies generally.

THE COURT: And familiar to you generally as investment vehicles?

THE WITNESS: As a potential investment vehicle. I didn't have any particular familiarity with corporations --

THE COURT: Didn't you go to the value line or other indicators and look for information about these things before you placed the orders?

THE WITNESS: No, sir. The only thing I would do was look in Standard & Poor's to see whether there was a convertible security which would have a higher yield, or because it was a convertible debenture have a degree of safety that I felt the common stock might not have, and because of such higher yield which we could use in the trust, and at that time there would be some relatively low yielding securities recommended for the trust and I had wanted to keep it at least, I think, at 5 per cent,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

because my mother was the income beneficiary of the trust and I didn't think we should be using growth type stock without that kind of income in the trust.

THE COURT: So when you received the growth type stocks without the requisite income, you would go to the books and dig out something else, make a suggestion to Chase and then something else would happen, is that right?

THE WITNESS: When you say dig out something else, you mean another security of the same issuer?

THE COURT: Yes, that had a higher yield?

THE WITNESS: Yes, sir, we did that, Jim Walter and a number of convertible debentirue issuers here.

THE COURT: Then after further consultation with the account executive, you would get the flow back to go ahead with the other security and you would place the order?

THE WITNESS: That's correct.

THE COURT: All right.

BY MR. DEVINE:

Q Again looking at the December 1966 to April 1967 period, when recommendations were received by you from Chase, Incorporated, were they matched or offset in the sense that if a sale was recommended some purchase was

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7 4580

suggested that I confirm for the record my present estimate of new funds to be derived from two first mortgages, adjustments of nonmarketable obligations within the family account, and bank borrowings.

Q Is it your testimony that you spoke to Mr. Bancroft before this letter was written?

A Yes. I wrote the letter as a result of speaking to him.

Q Do you recall anything else said in your conversation with Mr. Bancroft other than what you have testified to?

A No. I wrote the letter to Mr. Chase and sent a copy to Mr. Bancroft.

Q Did there come a time when the representatives on the Anderson accounts, the Chase, Incorporated representative, was changed?

A Yes.

Q When was that?

A I believe in April of 1967.

Q From whom and to whom was that change?

A From Mr. Bancroft to Mr. Spindler.

Q In the period from April of 1967 through October of 1967, when Mr. Spindler was the counsellor on the accounts, please describe, as you did before, the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

routines and procedures that were in effect with respect to your receiving investment recommendations.

A Well, Mr. Spindler came on the scene about the time these additional funds became available. So I think in early May he sent me what I gather is a program outlining a number of particular security purchases that they recommend, both by issuer and quantity, and generally with a price limitation. Most all of these purchases were made, with perhaps one or two exceptions, where convertible issues were purchased perhaps instead of the common, and in one case, I think in the case of Parker, Hannifin, the limit that was involved prevented us from purchasing the security, which continued to go up, and therefore we made no purchase. In the initial month or two, I guess, with respect to all of the accounts we would receive, after discussion perhaps of particular changes, after this initial program, subsequent purchases for the partnership -- where there would be changes, we would receive a confirmation of their recommendation on either the green or the red form. Along about August, I guess, there was a letter that indicated he wanted to bring his recommendations up to date, to have a record of the recommendations, and there would be discussions perhaps twice a month, on a guess, between he and I. In October,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

I think, during one of these discussions, I learned that he had some information that indicated that the estimate of earnings on Giddings & Lewis, which originally I had assumed had been based on an increase in earnings, showed that the earnings were going to be not increasing but about the same, I think, at that time, based, I suppose, on changes, and I asked him whether we should continue holding it because it didn't seem to conform to what I recalled to be this desirable feature of having investments only in securities where there was at least a 15 per cent increase in earnings, based on my original understanding from Mr. Chase. So he recommended that we sell it and I believe at the same time we took a loss in KLM, which was an offset for tax purposes. I think in connection with this we got an authorization to lpurchase Medtronic, 300 shares, at a limit which could not be accomplished at that time, although we did buy a hundred shares at a dollar over the limit.

THE COURT: You mean you authorized the trader to go over the limit? Is that what your answer is?

THE WITNESS: With 100 shares, yes, sir.

THE COURT: The recommendation of the counseling firm was at a certain price, and you authorized the trader to exceed that price on a hundred shares?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: Yes, sir, but the recommendation was for 300 shares.

Q During this period, April of 1967 through October of 1967, did the practice of offsetting recommendations continue in the sense that if cash was generated from a sale a purchase was recommended, and vice versa?

A Generally.

THE COURT: Was this offseting or was it keeping the funds invested? Which was it? You know, the notion of offsetting sounds almost like you were being traded, that there was some churning in the account. If that is the impression you want to convey to me, I would like to understand what you are saying in that regard. If all that you are telling me, using this word "offsetting," is that when it came time in the opinion of the counsellors to suggest a sale, they then gave you recommendations on how to keep the fund invested -- which is it, the former or the latter?

THE WITNESS: The latter.

THE COURT: All right.

BY MR. DEVINE:

Q Between April and October of 1967 did either your mother your mother or the Anderson Company have a margin account opened at any broker?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A The Anderson broker did and my mother's account did.

Q To the best of your recollection, was there any activity in these margin accounts during that period?

A Substantial purchases were made in the Anderson Company account, because it was bank and other broker - available funds that enabled us to generate this amount referred to in the selling memo. My mother's account occasionally used margin account, but I don't think it was particularly significant.

MR. DEVINE: Your Honor, I have two letter exhibits which have been marked. I have no particular testimony with respect to them, but I want to make sure they are part of our record. Do I understand your earlier statement that I don't need to have any foundation testimony with respect to them and they will be deemed admitted?

THE COURT: The only thing you have to concern yourself with is whether it is conceded they are genuine and not privileged.

MR. DEVINE: Could I ask for that concession on 14 and 15, please?

MR. DIAZ-CRUZ: Conceded.

THE COURT: Let me see them. It would be a good idea if you were to pass these exhibits to us as we go

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

along so I have them before me.

We will in the interest of the reporter take a short recess. Let me have all the exhibits we have talked about up to now.

(Recess)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q At any time between November of 1966 and October 6, 1967 did anyone from Chase Incorporated inquire of you formally or informally about the assets, liabilities and the affairs of the Anderson Company or of your mother?

A You mean other than the marketable securities?

Q Yes.

A Not that I particularly recall. There was, I think, an appraisal by Mr. Bancroft in February of 1967 that referred to certain cash amounts in my mother's account in a trust on the order of magnitude of $2,000, or something like that.

With respect to the trust, I inquired of John Whipple, who as managing trustee kept and keeps the books on the trust, and his reply was that there wasn't this available cash passed on to Mr. Bancroft. And with respect to my mother, from what I have seen subsequently it appears that they were showing cash in the account relating to the sale of stock dividends which as a capital gain was distributed for my mother's income purpose according to my understanding of the ways it was handled, profits from the account.

Q During this period of November 1966 through October of 1967 was any kind of form or questionnaire submitted to you to be filled out by you with respect to

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

the financial status and the financial affairs of the Anderson Company or of your mother?

A Not that I can recall.

Q Specifically did Mr. Spindler inquire of you with respect to financial status or affairs of either account during that period?

A I think there was some discussion, possibly a letter relating to the expected confusion that pumped cash into the partnership account that preceded his initial program of recommendations.

Q At any time was any request made of you by anyone from Chase, Incorporated for the 1966 tax returns of the Anderson Company or your mother?

A Not that I can recall.

Q In the period from October of 1967 through December of 1967, were investment recommendations received from Chase, Incorporated?

A Yes.

Q Can you describe, as you have before, the routines and procedures that pertained to that period?

A Well, I think I mentioned, as far as the partnership is concerned, the Anderson Company, a discussion with respect to Giddings & Lewis which led to our sale and a confirmation, and a confirmation for the sale of

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

KLM and recommendations to purchase Medtronic. The market by late October I gather had started to go down and I discussed with Dick Spindler the condition of the family accounts and what appeared to me historically to be a declining market.

It was from that discussion, I guess, that I first inferred that he wasn't apparently aware of the degree of our borrowings.

There was as a result I guess some study by Dick Spindler of the account which led to his issuing, I think on the telephone, a confirming sale recommendation with a letter that indicated that he was reluctant to sell them, but he could understand one is reluctant to hold the securities in a declining market especially when you are paying interest on borrowings to hold the security.

Q Let's see if we can get that in order. Do you recall a specific conversation with Mr. Spindler during that three-month period with respect to sales of securities?

A I believe I called him up with the continuing market decline.

Q Can you recall when you called him?

A I would say it was late October, perhaps, the 29th or 30th. I don't recall the exact date, but there

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7 4580

was I think a letter immediately thereafter, or a few days thereafter from him which may have confirmed some verbal recommendations that he had given me over the telephone.

Q What do you recall of the conversation, telephone conversation, in terms of what you said and what Mr. Spindler said, if anything?

A Oh, it was quite a while ago, but my present recollection indicated -- seems to be that I indicated some concern about the state of the market and we by this time had built up a substantial account, and it didn't seem that we had gotten any recommendations that would reflect the decline in the market that was occurring.

Q I show you Plaintiff Exhibit 62. Is that a letter that you received from Mr. Spindler?

A Yes.

Q In December of 1967 did you cause a hundred shares of Sherwin Williams to be sold short in your mother's account at Legg and Company?

A Yes, about the 20th of December it fell short against the box.

Q Would you explain what you mean by short against the box?

A Well, to me it means that you sell for later delivery an equivalent number of shares to the position

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that you hold long, and the effect of it --

Q When you say hold long, you mean a position that is already owned, is that correct?

A Yes, and the effect of it is to eliminate any risk, future risk in those securities -- that security.

Q What was the purpose of the short sale of Sherwin Williams?

A Merely to defer the gain to January 1967 for my mother, as she had accumulated a reasonable capital gains position for the calendar 1967 year.

Q When you say defer the gain, do you mean tax gain?

A The tax end, I guess the cash gain.

THE COURT: Just how do you do that as a matter of tax laws?

THE WITNESS: Well, if the long position is aged, held for a period of six months and one day, then a short sale against the box is -- defers the recognition of that gain until the short sale is closed out, if it is to be closed out.

THE COURT: How close it out, by buying in or by delivering?

THE WITNESS: By delivering in this case.

THE COURT: And if you deliver, in that case

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK, N.Y. CO 7-4580

doesn't the delivery date for purposes of the transaction and recording of the gain take the date of the short sale for taxes?

THE WITNESS: Well, it may, sir, but the way we were handling it I didn't understand that it would, and we used the date of the delivery of the securities as closing out the transaction.

THE COURT: You mean that you for tax purposes used the short sale date instead of the date when you delivered the securities in the box?

THE WITNESS: No, sir. Just the opposite, we used the date of delivery of the securities held long to cover -- close out the short sale as the date of realizing the gain.

THE COURT: And you think that deferred the gain for taxes?

THE WITNESS: Yes, sir.

THE COURT: Did you ever get any advice about that?

THE WITNESS: Not that I presently recall. We have never been questioned. I think my mother's return has been reviewed -- I don't know whether that particular one was, but she has --

THE COURT: That makes a difference if the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

particular one wasn't reviewed, doesn't it?

THE WITNESS: But I may have asked John Whipple up in Boston.

THE COURT: If your mother was running for Vice President she might have a different view.

BY MR. DEVINE:

Q Who prepared your mother's tax return?

A A law firm in Boston known as Bachelder & Luther, now known as P.B Arnold.

Q I think we may have it in the record. What if anything did you do in January 1968 with respect to the short position in Sherwin Williams in your mother's account?

A We delivered on about the second or third of January the long position in her account to close out the short position.

MR. DEVINE: I would like to offer Plaintiff Exhibit 61 in evidence.

Q Still with reference to the period between October of 1967 and December of 1967 were you satisfied with the quality of the recommendations that were being received during that period in Anderson Company?

A Would you give me the dates again, sir?

Q October 1967 through December of 1967.

A Well, to answer your question I would say no.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q What was the nature of your dissatisfaction?

A Well, it seemed to me that we had not been given any advice to lighten up a rather large for us portfolio created with a lot of borrowed money, when presumably the changes that occurred in the estimates of earnings for the issuers with whose securities we had been involved

Q Did you take any action in December 1967 with respect to this situation?

A Yes.

Q What did you do?

A I discussed with a friend or acquaintance of some number of years the possibility that we might for the partnership obtain a different investment adviser.

Q Did you have any discussions with anyone at Chase, Incorporated in or about December of 1967 with respect to the situation at that time?

A After I had made arrangements I discussed with Dick Spindler the fact that I felt that the partnership should terminate the relationship at least for the time being.

Q Let's get that conversation. Do you recall whether it was a telephone conversation or a personal meeting?

A I believe it was a telephone conversation.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Do you recall when it occurred?

A I would say toward the end of December, and I think that there was a letter confirming it in early January.

Q Do you recall what was said in the conversation and by whom it was said, referring now to the conversation between you and Mr. Spindler?

A Not particularly other than very clearly my taking the initiative to withdraw the partnership securities and cash from their supervision.

Q Did you do that?

A Yes.

Q Effectively when did that withdrawal occur?

A As of the end of December, 1967.

Q At this point I want to interject a question and come back to this. At any time did any representative of Chase, Incorporated request of you the 1967 tax returns for either the Anderson Company account or your mother's account?

A Not that I recall.

Q Commencing in January of 1968 what situation pertained with respect to the investment decisions, how they were made on the Anderson Company?

A Well, I had established a relationship with an

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK N.Y. CO 7-4580

investment adviser in California with whom my acquaintance, Jack Miller, had been working I understood.

Q I didn't hear the end of that. Would you repeat it?

A With whom and for whom my acquaintance, Jack Miller, had been working.

Q Who was that?

A Charles Parfield -- Partridge, I am sorry.

Q Was he associated with a company at that time?

A Parfield and Company I believe was the name.

Q And what was the investment advisory relationship that involved Parfield and Company at that time, and how did it affect the Anderson Company account?

A Well, Mr. Partridge, I understood was an attorney and had been involved with the Winfield Fund at one point. He had told me of a limited number of investment advisory clients which I think included one or more of the Chandlers, a family out on the West Coast. And he said that he could take on one more account in order to stay under the minimum of I think 15 persons, below which one does not have to register under the Investment Advisory Act of 1940 as I understood it.

He also spoke of I think a minimum size of account. And so after some discussion it was concluded

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. (212) 791-1020

that I personally would become his client for the purpose of principally obtaining advice with respect to the securities and cash in the partnership.

Q For how long a period did Parfield and Company advise with respect to the Anderson Company account?

A About seven months, something like that, although the term that was contemplated was one year.

Q From what date to what date did Parfield and Company advise the Anderson Company account?

A Well, I guess it might have been from about the end of December to the end of July.

Q What year was that ?

A 1967 and July of 1968.

Q During this period from December of 1967 through July of 1968, who counselled Mrs. Anderson's account, your mother's account?

A There was -- they stayed with Chase under the minimum fee arrangement then in effect.

Q Did there come a time when the Anderson Company account was returned to Chase, Incorporated?

A Yes.

Q When was that?

A The end of July in 1968.

Q Would you please describe the events which led

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to the return of the account which immediately preceded the return of the account?

A Well, one of the things that occurred was that in connection with an appraisal by Dick Spindler which I received for the trust and my mother's account about the end of June, I understood that their minimum fee had been increased from a thousand dollars to twenty-five hundred dollars, and I had arranged to pay Parfield thirty-five hundred dollars, which seemed like a lot of money for investment advice and counselling. So when the Chase fee went up, that was one of a number of things that led me to inquire about bringing the Anderson Company account back to Chase, Inc.

Q Did you have any discussions with Mr. Spindler with respect to bringing the Anderson Company account back?

A Yes.

Q When first do you recall any discussions with Mr. Spindler on that subject?

A Well, it would have been July some time. I am not positive of the date.

Q Do you recall what was said in that discussion?

A Well, I believe he indicated a willingness to. He may have at that time indicated that he might have wanted to talk to Mr. Chase about it. I don't know. There

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

may have been something in correspondence that indicated Mr. Chase was away or something. At any rate I think this was confirmed by a letter following whatever discussions did go on, a letter of mine the end of July 1968.

MR. DEVINE: Could we have a concession on 16, 17 and 18 at this point?

MR. DIAZ-CRUZ: So conceded.

Q Did you ever receive from Chase, Incorporated an appraisal of the Anderson Company account as of the date of its return?

A No. The date of its return was of June 6, 1968, I think.

Q Well, without getting entangled in the date of the return to which these documents pertain, did you receive an initial appraisal as of any return date showing the status of the Anderson Company account at that time?

A No.

Q Focusing on the period from June or July of 1968 through December of 1968, will you describe once again, as you have, the manner and procedures which were followed during that period with respect to Chase, Incorporated counseling of the accounts?

A Well, when I had been up with my letter the end of July of 1968, a list of the securities and available

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

think probably some time in 1967 I started this typed insert, cardboard folder that I had.

Q How long did you continue doing it?

A Through about I would guess the fall of 1970, something of that nature.

THE COURT: Can we say it was roughly during the period of the operation of the counseling agreement?

THE WITNESS: Yes, sir.

Q You were describing the nature of the investment counseling that was being received in the period July of 1968 through December of 1968. I would like you to go back to that and describe it. I don't know how much you have on the record. You might repeat.

A I had expected purchase and sale recommendations, merely because -- among other things because there had been a substantial change in the issuers and the securities and in the accounts between the time the partnership account left Chase's supervision in December of 1967 and the time they came back at the end of July of 1968. I didn't receive any formal recommendation, confirmation recommendation with respect to the partnership account, and talked I think a number of times on the telephone to Dick Spindler. The input at that time seemed to be more coming from our broker, Eastman Dillon, who would call

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

me -- and he was handling a number of institutional accounts -- and he would call me and ask me about, or mention when -- he thought a particular security looked attractive. It was as a result of such call I would call Chase and usually talk to Dick Spindler, and generally these purchases would be authorized verbally although I never received any formal confirmation. These consisted of things like Foxboro,and American Smelting and Refining I think was another one. Occasionally an analysis in the office of Legg and Company would mention the names of securities that he was recommending to others about which he presumably made a write-up -- I never saw any of the write-up.

I would call the Chase organization and would be authorized over the telephone to make such purchases.

Q During this July to December of 1968 period, did you receive any written recommendation forms, any of the green and pink forms for either account, to the best of your recollection?

A Not to the best of my recollection for either account, although I think in August of 1968 he did receive the final one for the trust account.

Q By final one you mean that after August of 1968 none of this type of form was received for the trust

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

accounts? Is that what you mean?

A To the best of my recollection, yes.

THE COURT: In 1967 and 1968 how many sources were you getting advice from on security transactions in addition to Chase?

THE WITNESS: In 1967, 1968? Prior to the time that the Anderson Company account was removed from Chase's supervision in 1967, I wasn't getting investment advice -- counseling from anybody else;because of failures I believe to be advised to lighten things up,I went to another adviser the end of 1967 and got recommendations from him which seemed at times to be flowing through from Eastman Dillon, who through the firm Parfield had requested the accounts be removed or sent.

THE COURT: The sheet that you have, that is now attached and forms part of Exhibit 18, seems to be in the form of a sheet for tax purposes to indicate the securities, purchases, gain and loss record, and shows transactions that apparently originated with Chase, and then there is EDUS. Who is that?

THE WITNESS: Eastman Dillon.

THE COURT: Then there is PRDR.

THE WITNESS: Partridge.

THE COURT: Then there is TECH.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: Yes.

THE COURT: Who is that?

THE WITNESS: That was a service that we subscribed to called an Indicator Digest.

THE COURT: One of these statistical services that sends out sheets?

THE WITNESS: Yes.

THE COURT: Their opinions?

THE WITNESS: It was an investment letter.

THE COURT: An investment letter. And you were following their recommendations, too, weren't you?

THE WITNESS: I believe there was one purchase and one sale that they recommended that was involved in our account.

THE COURT: Peterson Products; did you buy that?

THE WITNESS: I don't think there is anything called Peterson Products.

THE COURT: Here is a transaction scratched out, Peterson Products, 318 --

THE WITNESS: Poleron, is the same.

THE COURT: Maybe.

THE WITNESS: There was a stock dividend involved. That is why the record was changed from a few lines below, where it might be different. Probably a

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. (212) 4580

short term holding as I recall it.

THE WITNESS: That's right.

THE COURT: You got Hooker Chemical from Eastman Dillon and you got several of these transactions from Partridge, or whatever that name is, and you got Poleron Products from this TECH service, and some from Chase.

THE WITNESS: After the account came back to Chase?

THE COURT: No. Marked for Chase are purchases in 1967 in the period of April, July and possibly August.

It looks like you were taking advice from any source you could get it from. And you bought 100 through Eastman Dillon's suggestion in 1968 and made some money on that.

THE WITNESS: The broker was handling our account beginning in January 1968.

THE COURT: You were getting investment advice from a commission broker?

THE WITNESS: Mr. --

THE COURT: By this time I would imagine you were quite sophisticated in the ways of Wall Street, having been down there for quite a while with some of the good firms.

Go ahead, Mr. Devine.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7 4580

BY MR. DEVINE:

Q Still with reference to the July 1968 through December 1968 period, who initiated investment recommendations as between you and Chase, Incorporated? There were two initiated communications on the subject.

THE COURT: As I recall he said about tips he got from Eastman Dillon.

Q Was there any time that you can recall specifically between July of 1968 and December of 1968 when you received a call from anyone in Chase, Incorporated without your initiating some communication?

A I can't recall. I would imagine they probably called on several occasions.

Q Do you recall any specific occasion where that occurred?

A No, I can't recall any specific occasion. I wouldn't want to say they did call. I imagine they did call.

Q Do you recall whether any specific recommendation was made for the purchase or sale of any security as the result of a call initiated by Chase, Incorporated during that period?

A Well, I don't know who initiated the call, but they did recommend to the partnership account Scope,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Incorporated in late November or early December, I am not sure which, of 1968, and I would imagine that a call must have been initiated by Dick Spindler to tell me that he was, as I recall it, being transferred to some other activity, and that there would be a new account supervisor on the account named Henderson Inches beginning some time in December 1968.

Q Before we come to that, let's finish out with this July to December period.

When the Anderson Company account was returned to Chase, Incorporated, did you receive an initial program of purchases and sales, matched purchases and sales, with respect to the account?

A No.

Q At no time between July and December of 1968 did you receive such a program?

A No, there was an appraisal I guess as of October 6, 1968, but there wasn't anything evidentiary to me of the kind of review of an account that occurred in readings of the program in December of 1966.

MR. DEVINE: At this time, your Honor, I would like to offer Plaintiff's 19. It is subject to the problem, as you pointed out, with one or two other exhibits, in that the appraisal pages which this letter

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. DEVINE: This is October 4 of 1968 for the three accounts, and I believe each one of th5 three would be in there.

I have another copy, Judge. We can leave that book intact. I think you made a good suggestion.

THE COURT: Have you another copy?

MR. DEVINE: Yes, your Honor.

THE COURT: Don't interrupt yourself.

MR. DEVINE: All right. I will come back to it.

Q At any time did any representative of Chase, Incorporated ask you for copies of the 1968 tax returns for either the Anderson Company or your mother?

A Not that I recall.

Q You mentioned that in December of 1968 the representative on the Anderson accounts changed. Would you tell us again who became the representative, primary representative as of that time?

A I understood Henderson Inches did.

Q How was it that you were informed of this change?

A By telephone, I believe.

Q Do you recall when this call occurred?

A At the end of November or early December, I believe.

Q Of 1968?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7 4580

A Yes.

Q Is that a call that you made or a call that you received?

A I don't particularly recall who initiated the telephone call, but they initiated the information.

Q Who was it that you spoke to in this telephone conversation?

A Dick Spindler as far as I can recall presently.

Q What can you recall being said, and by whom?

A The only recollection I have is that Dick Spindler was moving on to another area and Henderson Inches was being assigned to our account.

Q In or about December of 1968 or January of 1969, did you have any conversation with Mr. Inches regarding the manner in which Chase, Incorporated was to counsel the Anderson accounts thereafter?

A No. There weren't any changes that I recall being mentioned in any way.

Q Did you have any discussion at or about that time with Mr. Chase regarding the manner of counseling the Anderson accounts after that time, namely, December of 1968 or January of 1969?

A No, not that I recall.

Q Looking at 1969 as a whole year, calendar 1969,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

I would like you again to tell us what you recall of the procedures and methods by which the Anderson accounts were counseled by Chase, Incorporated in that period?

A Well, they seemed to continue the same way that they were being handled by Dick Spindler just prior to his disassociation from the accounts. In other words, there were not written confirmations of recommendations to purchase or confirmations of recommendat ons to sell. Most of I guess the input seemed to be what I supplied in mentioning securities -- mentioning issuers to Inches, and we would subsequently be authorized to purchase it.

The one case I can recall the account man at Eastman Dillon calling me and saying there was some story going around that was good about Anaconda. So I called up Henderson Inches and I said I didn't have earnings of relative information, and this is what I was relying on the Chase organization for. I mentioned this to Inche and Inches said something about John just having bought that, fine, go ahead. So I think we bought to 3 -- I think maybe 300 shares in the partnership and 100 shares in my mother's account to my recollection. I think another hundred shares in the trust. Then it seemed to m the position might be kind of heavy in the partnership so we cut it back to 200 shares because it was based on

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FOLEY SQUARE, NEW YORK, N.Y. (212) 791-4580

statements made to me over the phone that I had taken this action.

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THE COURT: It occurred to me, Mr. Anderson, to ask you why if you were generating the ideas and giving all of the trading instructions did you continue this account with Chase. Why didn't you tell him, "I am getting nothing out of you, I am not going to pay you"?

THE WITNESS: I didn't know I was getting nothing out of them.

THE COURT: You certainly knew when you were generating the ideas that you were the one generating the ideas and not they?

THE WITNESS: Well, the ideas would come from others to me.

THE COURT: Yes?

THE WITNESS: And I would pass them on because I did not want to be involved with handling the accounts, making the judgements as to whether this security or that security was a good one on the basis of its outlook and market posture and a few other things. I was acting in a conduit capacity rather than a judgement capacity, Judge.

THE COURT: I just don't understand from the tenor of your testimony whether you thought that you were getting what you were paying for or not getting what you were paying for. Were you satisfied that when you obtained these tips for convenience that you were passing on to Chase, and which they expressed themselves on, that they were serving

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

the function you were paying for?

THE WITNESS: That is my understanding.

THE COURT: And when they functioned on your transfer suggestions you thought you were getting your money's worth?

THE WITNESS: Yes, sir.

THE COURT: Then what is the criticism of Chase if you were getting money's worth? What were they doing that you are complaining about in this case? You were making money, sometimes you were losing money. You were handling all of the purchases and sales. You say you didn't move on transactions that you got from other sources until you got their advice.. You got their advice and you moved on them. You now say that that was service that you believe was consideration for the payment. What is the criticism here? The market went against you ultimately; is that what the fault is?

THE WITNESS: They disappeared. Recommendations from their initiating point of view I guess is one of many points to summarize.

THE COURT: You mean the recommendations slowed down to a vanishing point?

THE WITNESS: The initiation appeared to, yes, in retrospect.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: When that occurred, why didn't you cancel out? You kept on. If you thought that you weren't getting what you were supposed to be getting, why didn't you stop? After all, if you were right there on the scene on a daily basis, knowing what was going on and what was being done, and if you thought that more should have been done why didn't you say so?

THE WITNESS: At that time I didn't know whether more should have or more should not have. I think it is only because of the things that have come up in the production in connection with this case that it becomes apparent that the information on which I was relying over the telephone was coming from security lists on which the names of many issuers that were inquired about were not listed, where the rankings were not in accordance with the information that you had given them for the superior rankings that we ordered, and we wound up with an awful lot of things that should not have been purchased.

THE COURT: Go ahead with your evidence.

BY MR. DEVINE:

Q During 1969 did you communicate with Mr. Inches regarding the Chase, Incorporated security rating system?

A Yes.

THE COURT: Have you come to a convenient

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes, I believe I did.

Q I show you Plaintiff's Exhibit 23. Is that a letter which you wrote to Mr. Inches?

A Yes.

Q Did you receive any written response to that letter?

A Not that I recall.

Q Do you recall whether any oral response was made to that letter?

A Not particularly.

Q Would you please describe the events which led to your preparation of this letter?

A Well, I think some time before we had received or I had received, a copy of what was entitled an approved list which contained names of a hundred more or less securities with earnings information and rating information on them, and I guess there had been some discussion between Mr. Inches and myself on the telephone about these, and I guess from this that he had indicated that the ranking had been changed from what was shown in those earlier lists, and it was my desire to indicate that we would prefer to receive recommendations on their superior rated securities.

Q I show you Plaintiff's Exhibit 25, which is a

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Q Did you request that document?

A No.

Q Prior to your receipt of that document, did you know that documents of that kind, namely policy statements of Chase, Incorporated, existed?

A I can't recall. There may have been some conversation in which Mr. Inches mentioned policy framework or something like that.

Q At about the time of your receipt of this document, did you receive any recommendations from Chase, Incorporated which reflected the policy change in liquidity percentages which is referred to in Plaintiff's Exhibit No. 63?

A Well, I think in my mother's and the company's account about that time we sold Reading & Bates convertible debentures and some recommendations were made, but I don't know whether the net effects of the recommendations reduced our liquidity.

MR. DEVINE: Your Honor, I would offer at this time Plaintiff's 26, and here again it will require the addition of some appraisal sheets as attachments.

Q At any time did any representative of Chase, Incorporated ask you for copies of the 1969 tax returns for either the Anderson Company or Mrs. Anderson?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Not that I recall.

Q Now moving on to calendar 1970, would you once again explain what the procedures were in effect during that year with respect to Chase, Incorporated's counseling of the Anderson accounts?

A Counseling procedure seemed to continue as it had in 1969, the very initial portion of the year. Everything seemed to be verbal without confirmations except as they occasionally appeared or were reflected or initiation occurred in the four months appraisal letters.

Q Did you receive during calendar 1970 any purchase or sale recommendations which were initiated by Chase, Incorporated?

A It is hard to remember without referring to some appraisal, I guess.

Q Do you have any specific recollection of any recommendations initiated by Chase, Incorporated in calendar 1970?

A I should think there should have been some, but I draw a blank at this instant. Well, let's see, would you want me to refer to any documents?

Q Not at this point. Let me see if I can refresh your recollection. Do you recall any recommendations or

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FOLEY SQUARE, N.Y., N.Y. 10007

conversations with respect to a security known as Syntex? The difficulty may be this may have been a 1969 or 1970 transaction.

A Yes, in 1969 I recall Mr. Inches mentioning the name of Syntex and verbally recommending it in at least two telephone conversations. I hesitated to proceed on his recommendation because I recall at that time it was ranked number three, and I had perhaps only a month later or a few months before asked about the security ranked one but we seemed to feel this was about the best thing we should purchase, so reluctantly in the partnership we purchased 50 shares which was an odd amount for us to purchase, and I recall doing it that way, so I would remember that it was reluctant.

Q How did you know that it was ranked three?

A Because I think I asked him on the telephone at the time. My recollection was that it was ranked three.

Q Did you have any discussion with him in 1970 with respect to that security?

A Yes, the broker called me from Eastman Dillon and said that he heard that there was a bad earnings story going around about Syntex among the institutions that he was in touch with, and suggested that we consider selling it. When I heard this, or upon hearing this I called Mr.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, N.Y.

Inches up in Boston and passed on this information and asked him what we should do, and he said to hold it.

Q When was that to the best of your recollection?

A It was in January of 1970, to the best of my recollection.

Q Did there come a time in 1970 when Chase, Incorporated had recommended that you sell your Syntex position or the Syntex position of the Anderson Company?

A There was a letter from -- in reply to one of mine from John Chase where he indicated I think in March that we should, from recollection, sell it later, but there wasn't a statement to sell it at that time as I recall it.

Q Before I move to that letter, let me ask whether at any time any representative of Chase, Incorporated asked you for copies of the 1970 tax returns for either Mrs. Anderson or the Anderson Company?

A In 1970?

Q A 1970 return.

A Not to my recollection, no.

Q I show you Plaintiff's Exhibit 17. Is that a letter that you wrote to Mr. Chase?

A Yes.

Q Are those annexed enclosures the enclosures that

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK, N.Y. CO 7-4580

were sent to Mr. Chase with that letter?

A I believe so.

Q Were those enclosures requested by Chase, Incorporated, or did you volunteer them?

A I believe I volunteered them.

MR. DEVINE: Your Honor, as to this exhibit I do have a copy which you can look at.

Q Did anyone from Chase, Incorporated communicate with you about the enclosures with the letter which is Plaintiff's Exhibit 27 after the date of the letter?

A Well, there was an answer from Mr. Chase.

Q No, just with respect to the enclosures for the time being, did you receive any communication from anyone at Chase, Incorporated with particular reference to the enclosures?

A Not that I recall with particular reference to the enclosures.

Q Did anyone ask you for an explanation of them or more information with respect to them?

A Not that I recall.

Q With respect to the letter, there is a reference in the letter to certain, I think it says, unusual withdrawals. Do you see that portion?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007 (212) 791-1020

Q Did anyone from Chase, Incorporated ask you about the nature of or the purpose of the withdrawals to which you referred there?

A Not that I recall.

THE COURT: What did that refer to by way of amount and purpose?

THE WITNESS: As far as the withdrawals are concerned?

THE COURT: Yes.

THE WITNESS: It refers to withdrawals of both a cash, I believe, nature from my mother and also an adjustment between my mother and the estate of my father, based on IRS audit of my father's estate tax return relating to the valuation of the partnership interest in his estate, as of the date of his death. And rather than pursuing it further, we decided to settle it by distributing from the partnership with the account of my mother to the trust through the estate 15,000 5 per cent debentures due in 1974.

THE COURT: And dollar-wise how much were these unusual withdrawals?

THE WITNESS: Well, that was part of it, and that was $15,000. I do not recall now what other additional withdrawals had been made by my mother.

THE COURT: Did you ever tell them what the withdrawals were for?

THE WITNESS: Not that I recall. I don't recall beinm asked.

THE COURT: They had no veto power over your mother's withdrawals, did they?

THE WITNESS: No.

THE COURT: And if what concern would it be if your mother wanted to withdraw money for her personal purposes, of what concern would that be to Chase and Company?

THE WITNESS: Well, this relates to securities being in one case transferred from her personal security account to the partnership to compensate for that withdrawal

THE COURT: Yes?

THE WITNESS: In the other case, it related to proposed contributions by my wife to become an additional partner of the company.

THE COURT: But you weren't seeking any counseling on whether to make those withdrawals or changes?

THE WITNESS: No.

BY MR. DEVINE:

Q Did the withdrawals which are referred to in Plaintiff's Exhibit 27 have any impact on the financial

SOUTHERN DIST ..CT COURT REPORTERS, U.S. COURTHO 3E
FOLEY UARE, NEW ...

position and status of your mother at that time?

A Well, it reduced the partnership account by the amount of the withdrawals.

Q Did that have anything to do with her needs for cash?

A Yes.

Q During that time period?

A Yes, the withdrawals were for her personal use, except to the extent that there was this unusual one to -- unusual ones to the trust, that go to the trust.

Q Did you receive a response to Plaintiff's Exhibit 27?

A Yes.

Q Was that written or oral, or both, just what?

A It was written.

Q I show you Plaintiff's Exhibit 24. Is that the writing which was in response to Plaintiff's Exhibit 27?

A Yes.

Q It is a short letter and I don't have a copy. Maybe you could read it into the record.

A From John Chase to me, care of Legg and Company. "Dear Doug: With respect to your letter of February 26th in which you contemplate adding 150 shares of General Motors and 100 shares of Johnson & Johnson to the company

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. (212) 791-1020

portfolio, we believe this would enable you to eliminate some of the less promising investments. Initially we would be inclined to use the appreciation on the General Motors to offset losses on National Casket, Avnet and probably L.V.O. At a later date it would be desirable to consider taking losses on Scope and Syntex against your Johnson & Johnson. With the proceeds from the sales we would strongly recommend that you make investment from our regular or "A" Lists. It was nice to hear from you. With kind regards, John."

THE COURT: Now, who had recommended Avnet to you?

THE WITNESS: This Avnet had been a stock the name of which was mentioned by the broker Eastman Dillon, and of which I believe I called Mr. Inches it was at that time, who I recall, I believe I recall --

THE COURT: Not one of their lists, it was Eastman Dillon's suggestion, wasn't it?

THE WITNESS: Yes.

THE COURT: How about National Casket?

THE WITNESS: That was recommended by Parfield and purchased before the Chase took over the supervision of this account toward the end of July of 1969.

THE COURT: Who recommended the third one, was it L.V.O.?

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE
FOLEY SQUARE NEW YORK, N.Y. CO 7-4580

MR. DEVINE: Yes.

THE WITNESS: L.V.O.

THE COURT: Who recommended that one?

THE WITNESS: That I believe was a security that was mentioned to me by Jim Finley, and about which I called Henderson Ieches, I believe, and he told me to buy it.

THE COURT: So that the three that they suggested eliminating from the portfolio came from sources other than the Chase recommended list; is that right?

THE WITNESS: They were not, I later learned, on the Chase list, that is correct, yes.

THE COURT: The source of the information that you got and which generated as a suggestion was not Chase, it was the three sources that you mentioned; isn't that right?

THE WITNESS: The source of the name, yes, sir.

THE COURT: And they were suggesting that in replacement that the proceeds be used on things that they were following up particularly; isn't that so?

THE WITNESS: That were on their regular "A" lists, yes, sir.

THE COURT: Did you do what they suggested?

THE WITNESS: I think we sold the L.V.O. and

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHOUSE

Scope and Syntex were sold later. We wanted to show a small gain in the partnership for fiscal year end purposes. So the General Motors and the Johnson & Johnson were sold prior to April 30th, 1970.

THE COURT: Did you sell the National Casket thereafter?

THE WITNESS: No, because I think if we did we would not have been able to show the small gain that I felt was desirable.

THE COURT: So you overruled their suggestion?

THE WITNESS: I didn't want to operate the company as a loss, which I think would have generated --

THE COURT: That is the same thing. You decided not to accept their suggestions?

THE WITNESS: I don't think that --

THE COURT: They suggested the sale of the Avnet and they suggested the sale of the National Casket and you decided against it and didn't do it isn't that what the fact is?

THE WITNESS: Yes, for that reason.

BY MR. DEVINE:

Q When you received Plaintiff's Exhibit 28, did you have the tne current Approved and "A" Approved Lists of Chase, Incorporated?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I don't know. I had one dated in January.

Q Were you receiving those lists on a regular basis from Chase, Incorporated?

A I don't believe so.

THE COURT: How many of those lists have you got in your possession from 1967 on?

THE WITNESS: We have one in the summer of 1969 and one in early 1970 and then some computer print-out or something later.

Q So is it your testimony that you have two or three lists over a five year period?

A Yes.

Q During the five year period from 1966 to 1971, did you know how often these lists were being issued?

A No.

Q Did you receive any minutes of the securities selection committee of Chase, Incorporated which indicated changes and updates on those lists?

A I think I saw the -- minutes of the securities selection committee, no, I do not believe so.

Q During that five year period you didn't receive the minutes of that committee, is that correct?

A I don't believe I received any subsequently.

THE COURT: Did you expect to receive their

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

minutes?

A No.

Q After March 10th of 1970 did Chase, Incorporated begin to provide you with the regular and "A" Lists?

A Not to my knowledge.

Q Did you receive any after March 10th, 1970 -- dated in 1970 or any subsequently?

A It was this computer print-out that came through some time in July to my recollection, but it wasn't the same form as the other one.

Q Were you receiving these lists on a regular basis?

A I don't know.

Q After March 10th of 1970 did Chase, Incorporated ever inform you as to which of the securities on the regular and "A" Lists the Anderson Company account should buy?

A Not that I can recall.

Q Did they ever tell you how many shares of what stock at what unit price to purchase with the proceeds of the sales that had been made in response to that March 10, 1970 letter?

A No.

Q After March 10, 1970 did there ever come a time

SOUTHERN DIST CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY

when anyone at Chase, Incorporated told you that the time had arrived to sell Johnson & Johnson, Scope or Syntex?

A Not that I recall.

Q During calendar 1970 did additional assets become available for investment in the Anderson Company account?

A Yes.

Q Excluding from that security contributions or loans to the partnership, how much in total became available for investment during calendar 1970?

A For the Anderson Company?

Q Yes, for the Anderson Company.

A About $90,000, I believe.

Q When was that?

A On July 31st, 1970.

Q What was the source of that additional money?

A That was generated on account of our sale on that date of the real estate in Cambridge.

Q Did you inform Chase, Incorporated of this sale?

A I believe I informed them of the contemplated sale and also informed them of the addition at a later time of the proceeds to the account.

THE COURT: When was this, in what period of time?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: The sale occurred on July 31st, 1970.

THE COURT: That was at about the time that you were going short on stock, weren't you?

THE WITNESS: We had a few short positions and odd lots at that time.

THE COURT: Did they ever advise you to go short on stock?

THE WITNESS: No.

THE COURT: Didn't they tell you that they were not in the business of advising short sales?

THE WITNESS: They said something to that effect, originally.

THE COURT: So you undertook to buy the Anderson Company to go short, Seaboard Coast Line and Target of which you picked up a loss on each stock, is that right?

THE WITNESS: Those are hedges.

THE COURT: They were short sales, weren't they? Weren't they put in as short sales?

THE WITNESS: Yes.

THE COURT: And when you put them in to short sales you had to tell the trader they were short sales so that he could dispose of them on an uptake?

THE WITNESS: That was handled by Eastman Dillon.

SOUTHERN DIST COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: But that is the way the short sale was handled on an uptake, not on a downtake, is that right?

THE WITNESS: Yes, as I understand.

THE COURT: So you had to give them specific instructions it was a short transaction?

THE WITNESS: I believe so.

THE COURT: You didn't tell them it was a hedge transaction, you told them it was a short transaction?

THE WITNESS: That's correct, that is what I believe.

THE COURT: And you were selling Consolidated Oil and Gas short at that time, and First National City Corporation short, weren't you?

THE WITNESS: First National City, the date of the transaction was in March --

THE COURT: February 22.

THE WITNESS: 1971, I believe.

THE COURT: Yes. You went short of Austral Oil in June of 1970. Do you recall that?

THE WITNESS: Yes.

THE COURT: And then you went short of Foxboro, and one I don't recognize here -- oh, Canadian Superior. All of these short sales resulted in capital losses to the Anderson Company, didn't they?

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: Yes, sir.

THE COURT: And they were all made on your responsibility and advice, isn't that right? As a matter of fact, there is a whole slue of them here, I didn't notice it on this page: Seabord Companies Lines, Walco, Syntex, General Telephone and Electric, Payne, another one on Austral Oil, another one of Canadian Superior Oil, British Petroleum, Cities Service and Foxboro, all resulting in short transactions, weren't they? That is the list of your shorts.

THE WITNESS: That is the list of them as they were closed out, yes, sir.

THE COURT: As a matter of fact, what you were doing was selling short and covering within a period of a week or two, isn't that so?

THE WITNESS: I think very early.

THE COURT: No, if you sold on May 6 and covered on May 28th, or sold on May 15th and covered on May 28th, you weren't doing much hedging, you were really speculating. weren't you?

THE WITNESS: That was in 1970.

THE COURT: That's right. That is when the market was taking its big tumble.

THE WITNESS: And I was hedging my position.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: All right.

BY MR. DEVINE:

Q In 1970 when the additional $90,000 became available for investment in the Anderson Company account, did you receive any program of purchases or uses for that money from Chase, Incorporated?

A No.

Q With respect to short sales,when first in 1970 was short sale made in the Anderson Company account?

A I would guess in March of 1970.

Q Would you describe the circumstances which led to the first of the short sales?

A From recollection, my wife was to contribute some Johnson & Johnson, her initial contribution as a partner to the company. The short sale was made in contemplation of that contribution which was made and used to close out the short position.

Q When next was a short sale made in the Anderson Company account?

A I think some time in April with what developed into a 160 point decline on the Dow Jones Average without particular warning along the way. I started to hedge our various long investments by creating short positions.

Q When you say hedge, would you describe what you

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. (212) 7 4580

mean by hedging a position as you did it at that time?

A By selling an equivalent number of shares, or approximately an equivalent number of shares short against a long position.

Q Now, is the net effect of a short sale of that kind to place the account in a short position, or is the net effect to place the account in a cash position?

A The net effect is to generate cash and to eliminate risk in further downward price motion of those securities.

Q In other words, if a short position gains, the box is created or a hedge position is created, the effect is to take the investor out of the market, is that correct?

A That is substantially it, yes, sir.

Q Whichever way the market goes, the investor remains in cash and the market has no effect on the amount of cash that he holds, once he establishes that kind of a position; is that correct?

A That is my understanding.

Q And was that your understanding at that time?

A Yes.

Q And why was it that you put the Anderson Company substantially into this cash position at that time?

Because I was concerned with the rapid downward motion in the stock market and with these stocks in general,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK N.Y. CO 7-4580

absent any particular advice for sales or purchases from Chase.

Q At this time in April, May of 1970 when the market started this decline, as you related, did you receive any recommendations from Chase, Incorporated with respect to purchasing or selling securities or in changing securities from one to another?

A Not that I recall.

THE COURT: As it turned out, you didn't foresee the upswing in 1971, 1972 and 1973, did you?

THE WITNESS: No.

THE COURT: And if you had held on to your long position, despite the downswing which started in September of 1969 and ran through the summer of 1970, you would have seen higher prices on the stock that you were long and shorted in the spring and summer of 1970, isn't that so?

THE WITNESS: I guess there would have been higher prices on the recovery, yes, sir.

THE COURT: So your guess as to what the market was going to do was not as good as the guess of Chase on balance and over a long term?

THE WITNESS: I wouldn't expect my guess would be as good as theirs, sir.

THE COURT: But you were the one who issued the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

orders.

THE WITNESS: With respect to hedging, yes.

THE COURT: To sell stock?

THE WITNESS: Yes.

BY MR. DEVINE:

Q In April and May of --

THE COURT: Of course, they have reversed themselves again in 1974, haven't they?

THE WITNESS: It would appear that way, yes, sir.

Q In April and May of 1970, do you know whether Chase, Incorporated was aware of the short positions that you created?

A I had no reason to suspect they weren't, because to the best of my knowledge they were getting copies of confirmation slips as these were generated by Eastman Dillon and copies of the monthly statements on the partnership and my mother's account.

THE COURT: But the main thing you know of that they could do to prevent you from short selling at a time that they thought the market was still good.

THE WITNESS: In, let's say, August of 19 --

THE COURT: Yes.

THE WITNESS: Yes, sir.

THE COURT: Is there anything they could have

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

done to prevent you from selling to the Anderson Company?

THE WITNESS: Two thing. One, give me positive written recommendations reflecting a program to utilize $380,000 worth of cash that was in my mother's trust and partnership account; two, to eliminate the margin account, because the only reason the margin account was to exist related to borrowing in connection with a real estate sale, which sale of real estate -- subject's real estate sale, which sale occurred on July 31st, 1970.

THE COURT: So in effect then what you are saying is that they were your trustees and that you shouldn't have been let loose to do your own trading?

THE WITNESS: That's correct. I should have received --

THE COURT: Is that the contract that you made with them in your judgment?

THE WITNESS: Well, the contract involved investment supervisory services, and I believe that is what is implicit in that in connection with the needs of each client, yes, sir.

THE COURT: You thought that you were going in to a trusteeship with them?

THE WITNESS: Fiduciary relationship, yes, sir.

THE COURT: Well, fiduciary relationship is a

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

word that covers many ~~lapses~~ LAYERS of meanings, but what you are describing is that they should have restrained you in some physical way so you couldn't issue orders to the traders to do the things that you did do. Now, I want to know what capacity or power they had to do that under the arrangements between you and your mother.

THE WITNESS: Well, they had a trading authorization from both of us.

THE COURT: Which they never exercised, isn't that right?

THE WITNESS: That is to the best of my knowledge, but they had the authorization.

THE COURT: All right. Go ahead, Mr. Devine.

BY MR. DEVINE:

Q If in April, May, June and July, in that period, 1970, you had received a program from Chase, Incorporated for recommended purchases of securities with respect to the several hundred thousand dollars in cash which the account had at that time, would you have considered acting upon that program?

A I certainly would have.

Q And was it your hope at that time to receive a program of that kind?

A Yes, it was.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q And is it your testimony that no one at Chase, Inc., ever called you during that period to give you one suggestion as to how to use one dollar of that amount of cash?

A At one point I did get a telephone call from John Chase in which I understood he wanted me to close out all of the short positions,and I was reluctant to do that because my understanding of close-out would have meant that as opposed to a cost basis of one hundred something something, 140 or so thousand, and a market valuation which was with respect to most of our portfolio hedged, that closing out would have realized losses of perhaps 50 or 60 thousand dollars as against a tax gain that I had reported to him in a letter dated October 2nd, I believe, of $105,000. And I just didn't feel like taking that kind of a loss on a verbal basis, as most of the securities that we had purchased had come on a verbal basis from an associate of his that had been assigned to our account.

In addition to that, and during that conversation I think Mr. Chase said something to the effect why don't you try the Chase Fund, and that didn't seem particularly responsive to our needs at the time, and as far as the trust was concerned it could not buy that, and I believe

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

realize any kind of a suitable 5 or so per cent yield.

Q With the exception of Mr. Chase's comment,"Why don't you buy the Chase Fund,"which as I understand your testimony occurred later in 1970, I want you to focus on April, May, June, July of 1970. And did you receive any recommendations from anyone at Chase, Incorporated in those four months with respect to the use of any of the cash which was available at that time?

A Not that I recall or can find in writing.

Q I show you the May 31st, 1970 monthly statement from Eastman Dillon with respect to the Anderson Company account, and ask whether you have any reason to believe that a duplicate of that statement was not sent to Chase, Incorporated.

A I have no reason to believe it was not sent.

Q What does that statement show under the heading "Short Account"? Without reading all the entries does it show any short positions, does it show any short transactions having occurred during the month being reported on?

A Twenty-four transactions and a substantial short position which effectively hedged our prior long position.

Q Now, in the four weeks following the date of that statement, prior to the rendition of the next monthly

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHO.
FOLEY SQUARE, NEW YORK, N.Y. CO 7 4580

statement, did anyone from Chase, Incorporated initiate any communication, written or oral, to you with respect to the short sales and the short positions that are disclosed by that statement?

A Not that I recall.

Q Did anyone from Chase,Incorporated communicate to you any recommendation with respect to use of the cash which these short sales generated during the four week period following the date of that statement"

A No, but these short positions, I think with one exception, were all covered within the next five or so days, so that th5 position at the end of the following month was substantially long.

Q Well, would you look at the statement for the next month and without describint every entry tell us what the short account shows now?

A 303 shares of Occidental Petroleum Corporation common and 15 shares of Occidental Petroleum, 360 convertible preferred.

Q In the short account?

A Yes, sir.

Q And no other short positions or short transactions

A A lot of short transactions but no other short positions at that time at the end of that period.

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Was the effect of the short transactions during that period to close out the short positions?

A No, the effect of the short transactions was to cover the short positions.

THE COURT: When you say to cover, you mean to go into the market and buy the equivalent security?

THE WITNESS: Yes, sir.

THE COURT: You didn't deliver from the box on any of these transactions, you went into the market and covered by purchases, isn't that right?

THE WITNESS: Yes, sir.

Q Did there come another occasion in 1970 when you caused short positions to be taken by the Anderson Company account?

A Yes, in connection with a Penn Central bankruptcy, I believe, in late June. There were a number of hedged positions created by short sales, so-called naked short sales generally in odd lots.

Q Would you look at the next monthly statement for the Anderson Company account, please?

A This is July?

Q The one after the one you just spoke of, whatever it is. Give us the date of it when you come to it.

A July 31st, 1970.

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. (0 7-4580

Q What is the status of the short account as disclosed by that statement with respect to positions and transactions during the prior period?

A Well, there are 21 short sales and it looks like 4 covering short sales with respect to the previous position of Occidental Petroleum.

Q What is the position of the short account at the end of that period as reported by that statement?

A There is a closing balance, credit balance of 30 odd thousand dollars and 17 short positions, all but 3 of which hedge our existing long position.

Q Is it true that the substantial effect of this series of short transactions was to put the Anderson Company account back into a cash position again?

A Yes; substantially.

Q In the four weeks following the statement to which you have just referred, the July statement, did anyone from Chase, Incorporated initiate any communication to you regarding the short sales or the short positions that are disclosed by that statement?

A I have nothing in writing and recall nothing in writing on it.

Q Do you recall anything orally in the four months following that statement -- excuse me, in the four weeks

SOUTHERN DIST. CT. COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

following that statement?

A There may have been some comment by Mr. Inches to do something with them, but there wasn't any positive program, there were no recommendations for the trust to the best of my recollection, which was a substantial cash position, nor for my mother's account.

THE COURT: I don't understand you, Mr. Anderson. You told me that during this period you were of the firm opinion that the market was headed desperately downward. Are you suggesting by these last answers that you make, that because you had "hedged" your position by short sales that you expected Chase to give you buy recommendations?

THE WITNESS: It would seem --

THE COURT: At a time when you were so certain that the market was headed down and were heavily short, with 20 or 17 short positions?

THE WITNESS: These are hedged positions, sir, which have the effect of generating cash and eliminating --

THE COURT: Do you believe the market should be bought during that period and not sold?

THE WITNESS: I didn't know.

THE COURT: But you were acting as if you thought it should be sold, weren't you?

THE WITNESS: I eliminated most of the risk in

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

continue with these securites positions.

THE COURT: Are you now suggesting that Chase should have advised you to reassume the risk that you had eliminated?

THE WITNESS: Well, I think it would have been very helpful if they had sent some reflection of the additional cash that was in the accounts, and whether some treatment should have been -- with respect to each of these securities whether we should cover it or close it out because of the change in rating or ranking, or the outlook for its earnings at that time.

THE COURT: You had already effected the short sales. What did you expect them to do?

THE WITNESS: Provide long recommendations.

THE COURT: Tell you to make some more short sales?

THE WITNESS: :No, provide long recommendations.

THE COURT: Provide high recommendations?

THE WITNESS: That is what I expected.

THE COURT: Wouldn't it have been totally inconsistent from your own point of view and conduct? You had been selling short in June, you had been selling short in July, you believed the market was going down. Penn Central had happened. There was chaos in the market.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Are you saying to me that you expected them to give you buy recommendations?

THE WITNESS: If their investment policy was such, that should have been given, yes.

THE COURT: Wasn't there investment policy to buy in that market?

THE WITNESS: I do not know.

THE COURT: Did you ask them?

THE WITNESS: I don't recall other than receiving a letter from Mr. Inches which referred to two confusing things to me. One was a backward look on the market which said that eight and a half year low in the Dow and another referred to future purchases at thoroughly sold at levels.

THE COURT: Yes? What did that mean to you?

THE WITNESS: I confused me.

THE COURT: Oh.

Go ahead, Mr. Devine.

BY MR. DEVINE:

Q To clarify this if we can, Mr. Anderson, when the short sales against the box or the hedge positions were created in June, July and thereafter in 1970, the effect of that was to take the Anderson Company out of the market and to set it apart from any market movement

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that might occur; is that correct?

A Substantially.

Q And with the large amounts of cash that that position generated, did you expect that Chase, Incorporated would advise you of some use for that cash?

A Yes, I did.

Q Did they ever advise you to put it in an interest bearing deposit of any kind?

A No, I was doing this absent their advice. I was rolling this over in C.D.'s generally.

THE COURT: Mr. Devine, how could he have used the cash generated by the short position? Would you tell me that? He owed stock which he had not delivered. He couldn't pick up that cash that was in that account no how.

MR. DEVINE: Yes, your Honor, but --

THE COURT: For any purpose. He couldn't buy stock on that cash. He was short.

MR. DEVINE: The cash was available by delivery of the securities, number one; it was available --

THE COURT: Which he didn't make. He didn't make delivery of the securities, and until he delivered the securities into the account he couldn't have touched a penny of that cash.

MR. DEVINE: But the securities were in the

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

account, your Honor.

THE COURT: But I say until he ordered the close-out of the account he couldn't touch a penny of that cash on margin or any other way.

MR. DEVINE: Yes, I understand what you are saying. The point I am tryinm to elicit --

THE COURT: Therefore, what use would it be for Chase and Company to know that he had this cash in the account if he couldn't use it?

MR. DEVINE: Your Honor, I think the point -- I don't know if it is appropriate for me to argue this at this point -- but I think the point here is that the Anderson Company at that time effectively was out of the market. Now, there were various things that it could have done, it could have been advised to do. It could have gone back into the market with these very securities that had previously held long and it could have done that by covering the short position. It could have gone back into --

THE COURT: Which he did do.

MR. DEVINE: We haven't come to that quite.

THE COURT: It would be covered within a week or two.

MR. DEVINE: In May.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: In June.

MR. DEVINE: There is a whole period of transactions here.

THE COURT: But he covered on June 28.

MR. DEVINE: And then renewed them, your Honor. In other words, he continued to be in a posture essentially out of the market. In other words, he could have covered, in which case he would be back in the very long position he was previously in. That was an alternative. He could have closed by delivering those securities, which was another alternative which would have had the effect of freeing the cash and putting him into a ten dollar bill cash position, where he would have the money in his hip pocket and could buy other security, any other security available at that time, your Honor, commercial paper, bonds, Treasury bills.

THE COURT: He wouldn't have been buying commercial paper then because it was a moment when commercial paper was in serious trouble.

MR. DEVINE: I accept that. My ignorance I admit in that regard.

THE COURT: It is very interesting, you know, to read the financial chronicles of that period.

MR. DEVINE: I have some familiarity, your Honor,

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

but what I am saying is this: that as of that time the cash could have been obtained as cash by closing the position, and that cash could have been used for any number of different things, so he had the alternative of either staying in those securities or getting into some different securities, maybe partially equity, partial interest bearing, partially debt, it could have been a variety of things to cope with the situation which as you say was a wild situation at that time.

He didn't get any advice at all on this subject.

THE COURT: He was taking the bull by the horns himself.

MR. DEVINE: No, what he was doing, Judge, he was saying "I don't know what to do, I will get my money in cash and wait for some advice." This is our point.

THE COURT: I think he was having those hopes that all of us had. We wish we had bought when it was low and sold when it was high.

MR. DEVINE: Of course, this was the purpose of entering this contract.

THE COURT: I have had this view myself.

MR. DEVINE: This was the purpose of entering the contract. This was the root of it.

THE COURT: All right.

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MR. DEVINE: I would ask at this point that we offer with a concession 29 and 30. These again need to have appraisal sheets annexed.

THE WITNESS: Your Honor, may I make a --

THE COURT: I would like to have you tell me anything you can to explain this posture. It just doesn't jell in my thinking at this point. I may be missing something. If you can add the missing link, I would like to know what it is.

THE WITNESS: Well, one of the things that didn't appear clear to me when you listened to Mr. Devine in connection with the amount of cash available was that I believe, exclusive of cash generated by short or hedged sales, there was approximately $380,000 of free cash invested in at that time against the C.D.'s for the accounts of the trust, the partnership and my mother which didn't apparently, when subsequently it's been revealed Chase policy turned bullish, it didn't receive the benefit of long investment recommendations. This was exclusive of the short sale proceeds to which you and Mr. Devine were talking about.

THE COURT: What was the time frame you say they turned bullish?

THE WITNESS: I gather that from material I have

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

seen in connection with this case that they turned bullish about June or the end of May of 1970.

THE COURT: They were a little early, weren't they?

THE WITNESS: Well, I think that that registered the market bottom so as I think a deposition points out, they were hitting the nail on the head.

THE COURT: All right, go ahead.

MR. DEVINE: Your Honor, also at this time we had reference to Plaintiff's Exhibit 48, which is a two-part exhibit, we have had reference to the second part. I would like to offer at this time all of Exhibit 48, as well as Exhibit 47, which are the monthly brokerage account statements for the two accounts.

Q I show you Plaintiff's Exhibit 31, and ask you if you have seen that document before?

A Yes.

Q When did you first see it?

A Some time after August 25th.

Q Of what year?

A 1970.

Q Did you receive it from Chase, Incorporated?

A Yes.

Q Was the handwriting which appears on that document

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK N.Y. CO 7-4580

when you received it?

A Yes.

Q Had you requested this document or anything of similar nature from Chase, Incorporated prior to your receipt of it?

A Not by such a document, no.

Q I show you Plaintiff's Exhibit 32 for identification, and ask if that is a copy of a letter which you wrote

A Yes.

Q Did you cause the original of that letter to be sent to John Chase?

A Yes.

Q Did you cause a copy of that letter to be sent to Mr. Inches?

A Yes.

Q Were those two letters sent in separate wrappers?

A Yes.

Q Was either wrapper returned to you unopened?

A No.

MR. DEVINE: We would offer Plaintiff's Exhibit 32 at this time, your Honor.

Q Did you ever receive a written or oral response to Plaintiff's Exhibit 32 from anyone at Chase, Incorporated? By that I mean any kind of response which referred to the

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

letter?

A Is that letter 32?

Q Yes.

A The October 2nd letter?

Q Yes.

A No, I never received any response that referred to that letter that I recall.

THE COURT: When did you stop trading with Loeb Rhoades?

THE WITNESS: In March, I guess, of 1971.

THE COURT: I see that you transacted a considerable number of short transactions with them, and apparently either bought or sold puts and calls to a very substantial degree, is that so, for the Anderson Company?

THE WITNESS: A number of security transactions and a few puts and calls I would say, a half a dozen.

THE COURT: Also for the record if anybody reads it will understand what we are talking about, what is a put?

THE WITNESS: A put is an option to deliver stock at a fixed price, a security at a fixed price.

THE COURT: And buying that option was an indication that the purchaser was concerned that the market

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

was on its way down; isn't that so?

THE WITNESS: That is what would be implied, yes, sir.

THE COURT: So as late as the early part of 1971 you were still betting that the market was going down; isn't that right?

THE WITNESS: Yes, sir.

THE COURT: Did you get any advice from Loeb Rhoades to that effect?

THE WITNESS: No, not particularly.

THE COURT: Did anybody advise you on the transactions with Loeb Rhoades?

THE WITNESS: Not that I recall.

THE COURT: Did anybody advise you on the transactions with Eastman Dillon in 1970 and 1971?

THE WITNESS: Not that I recall. I subscribed to Standard & Poor's Trend Line, which is merely a chart service at that point, but it wasn't an advisory service.

THE COURT: Were you reading Value Lines advice on a weekly basis?

THE WITNESS: I was looking at Value Lines from time to time.

THE COURT: How about those two other statistical services that you had available, were you following those

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

on what they said was the course of the market?

THE WITNESS: Not particularly, I don't believe.

THE COURT: Is it your testimony that you were just making these transactions on your own responsibility without advice?

THE WITNESS: Yes.

THE COURT: It looks like very substantial trading here in Eastman Dillon and Loeb Rhoades. It was almost on a daily basis, isn't that so?

THE WITNESS: It was, I guess, at one point.

THE COURT: Here as late as October of 1971 you were very heavily short at Loeb Rhoades. Do you recall that?

THE WITNESS: Yes, I held a number of short positions over what appeared to be two market peaks, one in April of 1971 and another one in a lower level in August 1971.

THE COURT: All right, Mr. Devine.

Q I show you Plaintiff's Exhibit 33, and ask if you have seen that before.

A Yes.

Q Do you recall when you first saw it?

A Some time after November 4th, probably within a week or ten days, something of that nature.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Did you request that this document or anything like it be sent to you?

A Not that I recall.

Q Was the handwriting which appears on the first page of that document on the document when you received it?

A Yes.

Q Could you read the handwriting, please?

A "Doug, this is the most recent economic report for the office. It is somewhat more optimistic than yours truly, H.I."

Q At the time you received that document did you know who had written on it?

A I understood it was Henderson Inches.

Q Did Mr. Inches at any time communicate with you in any greater detail about his advice as opposed to those of the office at that time?

A At this time?

Q At the time you received that document.

A I don't recall the specific points he might or may not have made on the telephone at that time. There wasn't anything in writing I don't think at this time.

Q Do you have any specific recollection of any elaboration which he provided you with respect to his handwritten notation on that document?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Well, with respect to the economic outlook, or with respect to the market and our securities position?

Q No, with specific reference to that notation.

A I don't recall anything particularly that related to the economic outlook other than possibly something that may have been sent, an appraisal.

Q I show you Exhibit 34. Have you seen that before?

A Yes.

Q Do you recall when you first saw it?

A Some time after October 6, because of that date being on it, but I --

Q October 6 of what year?

A 1970.

Q Was the handwriting which appears on the document on the document when you received it?

A I believe so.

Q Can you read that handwriting?

A "Here are our work sheets on the Anderson accounts which you should check over."

THE COURT: Who wrote that?

THE WITNESS: Signed Henny, for Henderson Inches.

Q Prior to the time when you received that document had Chase, Incorporated ever sent you work sheets before?

A No.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Had Chase, Incorporated ever asked you to check over their work sheets before?

A No.

Q Had you ever seen work sheets like this before?

A Not that I recall.

Q Did there come a time when you lost your employment at Legg, Mason and Company?

A Yes.

Q When did that occur?

A About the 19th of November, 1970.

Q In or about that time did you have occasion to go to Boston?

A Yes.

Q When you were in Boston did you see anyone from Chase, Incorporated?

A Mr. Chase, yes.

Q Did you meet with him personally?

A Yes.

Q Do you recall whether anyone else was present at that time?

A I don't recall anybody else being present.

Q What was said on that occasion, and by whom, to the extent that you can recall?

A Well, I remember Mr. Chase said something about

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

you should have sold more the prior spring. I think I made a statement about being bearish.

THE COURT: Who made the statement?

THE WITNESS: I believe I did.

Mr. Chase made some statement to the effect that powerful things were happening. I don't recall that that was fully explained. I believe it was a rather brief meeting.

MR. DEVINE: Your Honor, I would ask at this time to have accepted Plaintiff's Exhibit 35 and Plaintiff' Exhibit 36. 35 again will require the annexation of some appraisals.

Q I show you Plaintiff's Exhibit 37. Is that a letter that you received from John Chase?

A Yes.

Q Did you receive it on or about the date of the letter?

A I received it a few days subsequently to the date of the letter, I believe.

Q Would you read the sentence of the letter which speaks of short positions, covering short positions?

A "In connection with your short position in the family and company accounts, I would strongly recommend that you cover these positions within the next few weeks.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

As you know from our November 4th report on the economic outlook, we are looking for a moderate recovery. The bottom of the market was probably registered in the May-June period of this year and any downturn at this juncture would likely hold up above the 710, 720 level of the Dow. It was nice to hear from you. Kind regards."

I have a notation on the letter that the Dow was then at about 760.

Q The November 4th memorandum, which is referred to in the portion of the letter you just read, is that the memorandum on which Mr. Inches noted that he was less optimistic?

A I believe so.

Q When you received Plaintiff's Exhibit 37, did you understand whether Mr. Chase meant to close or cover the short positions?

A I understood that he meant that these should be covered.

Q Which in your terminology at that time meant what?

A Buying -- going in to the market to buy stock to deliver and cover the short sales.

Q I show you Plaintiff's Exhibit 38, which has a one-page enclosure. Is that a letter which you received from Chase, Incorporated?

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Whipple said that the family was going to discontinue the counseling arrangement.

Q Was it at that point that you wrote Plaintiff's Exhibit 39?

A I believe so.

Q Following termination of the relationship between the Anderson accounts and Chase, Incorporated, did either of the Anderson accounts retain another investment advisor or counselor?

A No.

Q Did you continue to have investment responsibility for these accounts following termination of Chase, Incorporated counseling?

A Yes.

Q I show you Plaintiff's Exhibit 41. Did you receive that letter?

A Yes.

Q When did you receive it?

A May 6, 1972.

Q I show you Plaintiff's Exhibit 42, looking only at the typewritten portion and signature at this time. Is that a letter which you sent to John Chase?

A Yes.

Q Is the handwriting at the bottom of that letter

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Off the record.

(Discussion held off the record.)

All right, Mr. Diaz-Cruz.

CROSS EXAMINATION BY

MR. DIAZ-CRUZ:

Q Mr. Anderson, you testified to having relied on certain statements made in Plaintiff's Exhibit 3, which is now in evidence. If I may show you a copy of that exhibit, which unfortunately is marked, and ask you whether you at that time relied or read that the exhibit, next to the last page states that recommendations for the purchase and sale of securities are made by letter, by telephone or at personal meetings with the clients.

A Yes, I believe I read that.

Q So you were aware, sir, that recommendations from Chase, Inc., could be negotiated by either written or telephone calls form, is that correct?

A They were initiated by telephone calls and confirmed thereafter in writing.

Q They were also at times initiated by telephone calls in their entirety, is that not correct? Is that not your testimony?

A Yes, at times they were initiated by telephone calls without confirmation.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q And they were specific recommendations, is that not correct, by telephone, Mr. Anderson?

A Yes.

Q Mr. Anderson, did you also at that time rely on the statement made in the last page, Plaintiff's Exhibit 3, the Chase, Inc. brochure which reads "We encourage our clients to confer with us frequently in order that they may clearly understand the reasons underlying the investment recommendations made"?

A Yes.

Q Mr. Anderson, how often did you on the average speak on the telephone with Mr. Spindler?

A I guess -- I don't have any records -- it would seem to be twice a month, something on that order of magnitude.

Q And how often did you speak on the telephone with Mr. Inches?

A About the same generally.

Q And how often did you speak on the telephone with Mr. Bancroft?

A It might have been a little more frequently with Mr. Bancroft, but I would say about twice a month as a gneeral situation.

Q Did they initiate some of these calls?

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A Particularly Mr. Bancroft.

Q Did Mr. Spindler initiate telephone calls?

A To a lesser degree, yes.

Q Did Mr. Inches initiate telephone calls?

A Occasionally.

Q What do you mean occasionally, Mr. Anderson?

A Well, thinking in a relative sense I would say that Mr. Bancroft exercised the greatest degree of supervision by initiating most all of the calls. Mr. Spindler probably at least in the initial phase of our relationship initiated most of the calls, and toward the end Mr. Inches initiated the least number. I am just trying to put it in relative perspective.

Q You have testified, sir, that you spoke to Mr. Inches on the telephone approximately twice a month, is that not correct?

A Approximately, yes.

Q Mr. Anderson, you testified that at times during the period from 1967 through 1970 the Anderson accounts, specifically the account of the Anderson Company and the account of Mrs. Anderson, used margin; is that correct, sir?

A What was the date, please?

Q Between 1967 and 1970.

A Yes. I don't know what I testified, but they did

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

use margin.

Q Did Chase, anyone at Chase, Inc., recommend to you the use of margin for the accounts of your mother?

A Initially Mr. Chase wrote the document with respect to the trust and my mother's account that it would be improper to use margin. . However, as a result of our inability to sell 225,000 approximately of promissory notes of the Anderson Company, I indicated that we would have to make certain adjustments within the family account and this led to using about $28,000 worth of borrowing to the maximum in my mother's account, which was offset by $30,000 worth of debentures of the corporation, so that we were -- the situation changed as a result of not being able to accomplish the financing as originally contemplated

Q Mr. Anderson --

THE COURT: Just a minute. What is the answer to the question as to whether Chase recommended a margin account?

THE WITNESS: Inaitially he recommended there not be margin accounts in my mother's and the trust.

THE COURT: Did they ever recommend a margin account for anybody named Anderson?

THE WITNESS: If not recommend, they were aware of their existing.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Strike out everything after "not recommend."

Q Mr. Anderson, did Mr. Chase write to you on October 6, 1966 and refer in any way to the inadvisability of short sales for the Anderson accounts?

A I think he said something, normally work on the short side.

THE COURT: Did they ever recommend short transactions?

THE WITNESS: I don't believe they ever recommended any short transactions.

THE COURT: Did they ever recommend a policy of going short?

THE WITNESS: I don't believe they ever -- I don't know what policy they had, but they never recommended a policy of going short. I did understand at a meeting with Mr. Chase in June of 1972 that there didn't seem to be any particular objection to hedged sales.

Q Mr. Anderson, I show you a copy of Plaintiff's Exhibit 5, and ask you whether that is the language that you are referring to in the second paragraph, beginning with the middle of the paragraph with "We"?

A Yes.

Q What does that say, sir?

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FOLEY SQUARE, NEW YORK, N.Y. (212) 7-4580

A "We would not want to have you expect us to operate on the short side of the market."

Q Is that a letter that you received, Mr. Anderson?

A Yes.

Q From Mr. Chase, is that correct?

A Yes.

MR. DIAZ-CRUZ: Mr. Devine, do you have the originals of Defendant's Exhibits 26 and 27, the so-called Parfield orders?

Q Mr. Anderson, what was the nature of the relationship with Parfield and Co.?

A I had a relationship with Parfield and Co. for investment advice.

Q You retained Parfield and Co.; is that your testimony?

A I believe it is.

Q Did you yourself pay the Parfield fee?

A I believe so.

Q Were you reimbursed by the Anderson Company account?

A I believe so.

Q Were you reimbursed for a portion thereof by your mother?

A I may have been. I am not positive.

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Q But you may have been; is that correct, sir?

A Yes.

Q Mr. Anderson, were recommendations made by Parfield and Co. used in your mother's account?

A Yes.

Q Did you advise or did you tell anyone at Chase, Inc. that Parfield and Co. would be making recommendations for Mrs. Anderson's account?

A I don't recall.

Q Your testimony, Mr. Anderson, was that only the Anderson Company account had been eliminated from Chase, Inc.'s supervision around December of 1967, is that correct?

A Correct.

Q Mr. Anderson, had you informed Parfield and Co. of the investment objectives of your accounts, specifically of the Anderson accounts?

A I feel confident I did, but I can't think of any particular writing. Maybe there is one that outlines it

Q Did you advise them of the investment objectives of your mother's account?

A I believe so.

Q Did you advise him or did you tell him that it would be all right to recommend short sales in Mrs.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Anderson's account?

A I don't recall.

Q Do you feel confident you did, though, sir?

A I don't recall. I think I told him -- probably told him of the investment objectives of my mother, but I don't recall whether --

Q Did you specifically tell him, Parfield and Co., that it would be all right to make short sales or to recommend short sales in the company account?

A I may have. I don't particular recall.

Q Yet the time came when Parfield and Co. recommended short sales for the company account; is that correct?

A Correct.

Q And the time also came when Parfield and Co. recommended short sales for your mother's account; is that not correct?

A I believe so.

Q This was the period when your mother's account was ostensibly under the supervision of Chase, Inc.; is that correct?

A I believe so.

Q Do you recall what those short transactions were, Mr. Anderson?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A In which account?

Q Let's take your mother's account.

A I think there was a couple of hundred shares from recollection of Curtis Publishing, and maybe a hundred shares of Microwave Associates in my mother's account.

Q That is 300 shares --

A I imagine 300. I am not positive.

Q Of Curtis Publishing, is that correct, and 100 of Microwave Associates. Mr. Anderson, I am showing you Plaintiff's Exhibit 47.

A Yes.

Q Were th5se so-called hedged positions?

A No.

Q These were straight short sales, is that correct?

A Yes.

Q Had you modified the goals of Mrs Anderson's account in May of 1968?

A Modified them from what?

Q Did you modify them from any goals or any investment objectives that you may have communicated to Chase, Inc.

A No, I don't know that they were -- that I modified them.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q The answer is no?

A I don't believe I modified them. I am puzzled as to this question, but --

Q Mr. Anderson, when did you change, transfer the brokerage accounts of your mother and the Anderson Company to Eastman Dillon?

A I guess about the beginning of 1968. January comes to mind; I am not positive. About that time.

Q Was this, Mr. Anderson, at the specific request of Parfield and Co.?

A Yes, they made the introduction.

Q I am sorry?

A They made the introduction, yes.

Q Did they not actually require that you transfer your brokerage account to Eastman Dillon in order to take you on as a client, as you suggest?

A I would say yes, they required it. I am not positive it was required, but I think it was suggested or recommended or something of that nature.

Q Mr. Anderson, I show you Defendant's Exhibit 26 and ask you whether you and Mr. Partridge at any time discussed the possibility of having your mother's investment assets transferred to the partnership in their entirety in order to become -- in order for you to become

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

a client of Parfield and Co.?

A It came up in that connection, but it wasn't done.

Q And is it correct, sir, that Mr. Partridge of Parfield and Co. says, "You thought that you would be able to have her transfer her portfolio to the partnership. If this could be done we would then have you as our client and we could work with you."

Did you say that?

A Yes.

Q Mr. Anderson, you agreed to the transfer of the brokerage accounts to Eastman Dillon, is that correct?

A Yes.

Q Was the $3500 fee referred to, Defendant's Exhibit 27, paid initially or was it supposed to be paid periodically?

A I think it was paid in equal quarterly amounts during the period of one year.

Q Is that one year from when?

A About the 15th or something, or the end of December 1967.

Q Either the 15th or --

A Some time the end of December, I believe.

Q Mr. Anderson, you testified, I believe, that the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Anderson Company account was only under the supervision of Parfield and Co. for approximately seven months, is that correct?

A Approximately.

Q Yet you continued to pay the fee to Parfield and Co. through the end of 1968; is that correct, Mr. Anderson?

A Yes.

Q Did you pay Parfield and Co. any further fees beyond 1968?

A No.

Q Mr. Anderson, did you continue in contact with Parfield and Co. beyond December of 1968?

A Not particularly. I knew Jack Miller and he was involved with Parfield, and I still occasionally talk to Jack, so only in that way.

MR. DIAZ-CRUZ: Mr. Devine, do you have the original best copy of Defendant's Exhibit 29, Mr. Anderson's expense records for March 14th, 1969?

MR. DEVINE: I see our associates have marked the xerox, but we have no foundation objection to it.

Q Mr. Anderson, your testimony is that after December of 1968 you no longer continued to utilize the services of Parfield and Co. for investment advice?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

MR. DEVINE: Objection, your Honor. I don't think that was the testimony.

Q Did you, sir, continue to use the services of Parfield and Co. after December of 1968?

MR. DEVINE: The same objection, your Honor. I don't think there is any testimony that the services were used between July of 1968 and December of 1968.

THE COURT: The objection is overruled.

A Not the general situation, but I know what you are referring to, and I can explain it.

THE COURT: Did you use the services after December of 1968?

THE WITNESS: Generally, no, sir.

THE COURT: What does that mean? Specifically yes, generally, no?

THE WITNESS: One specific case.

THE COURT: Then you used their services on at least one occasion?

THE WITNESS: All right, excuse me.

THE COURT: Is that right?

THE WITNESS: That's right.

Q Mr. Anderson, I show you Defendant's Exhibit 29, and I ask you whether you can identify that document, sir?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Does that, sir, show -- what is it?

A It is a copy of an expense voucher, a portion of an expense voucher of the Anderson Company which I filled in.

Q Was that prepared by you?

A Yes.

Q Now, Mr. Anderson, does that expense voucher not indicate that you had met with Mr. Miller of Parfield on March 14, 1969?

A That is the way the abbreviated thing reads, yes.

Q I see. What is the entry next to the Miller-Parfield legend, Mr. Anderson?

A Investment Advice.

THE COURT: That was so you could deduct it for tax purposes, is that right?

THE WITNESS: Yes, sir.

THE COURT: Did you get some good advice?

THE WITNESS: I only asked him about one security, Ebasco, which they had originally recommended.

THE COURT: Did you buy it?

THE WITNESS: I held it in the spring of --

THE COURT: What did you ask him about Ebasco?

THE WITNESS: To continue to hold it.

THE COURT: And what did he tell you?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. [illegible] 4580

THE WITNESS: I don't recall. We sold it thereafter.

THE COURT: Did he suggest you sell it?

THE WITNESS: I don't recall, sir. It was not on what I later earned --

THE COURT: In any event, you felt the lunch was satisfying.

THE WITNESS: It was a dinner, sir, and I called them up for dinner because I was free.

THE COURT: I don't think you need that in evidence. It is perfectly plain.

Q Mr. Anderson, how did you receive recommendations from Parfield and Co.?

A Generally over the telephone.

Q Did you receive calls from Mr. Partridge?

A Yes, or from Jack Miller.

Q Who is Jack Miller, sir?

A He had been an associate of Mr. Partridge and an acquaintance of mine since about 1960 or 1961.

Q Were calls also transmitted -- were recommendations also transmitted to you from Eastman Dillon during the so-called Partridge period?

A I suppose you could say they were recommendations the names of issuers were mentioned, yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q And who was that gentleman at Eastman Dillon, sir?

A Robert Elmo.

Q Mr. Anderson, in June 29, or in June of 1969, rather, did you engage in some short selling in the Anderson Company account?

A I think we sold one security short against the box in short, yes.

Q You said both short against the box and short, is that correct, sir?

A Yes.

Q Part of the holding was against the box and part was --

A I believe so.

Q Who recommended that to you, Mr. Anderson?

A I don't recall. I may have done it myself based on the decline in price that I think had occurred between our cost and the price at which the securities were hedged and sold short.

Q Did anyone at Chase, Inc. recommend that to you?

A Not that I recall, but there may have been some discussion with Mr. Inches on the telephone. I can't be sure.

Q Is it your testimony that it was not recommended

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to you by anyone at Chase, Inc., is that correct, Mr. Anderson?

A I don't believe so.

Q Now, Mr. Anderson, in September of 1968 did you engage in some short sale also in the company account?

A September of 1968? I don't believe so.

Q I show you a copy of Plaintiff's Exhibit 48, specifically the monthly statement for the Anderson Company account for September 29, 1968, Mr. Anderson, and I ask you whether that shows the Anderson Company short Honeywell Incorporated?

A Yes, it does. You asked me which engaged in some kind of transaction in September of 1968 and I think this transaction goes back to July of 1968 and that it was closed in October of 1968..

Q Did Parfield recommend that you engage in that short sale, Mr. Anderson?

A Yes.

Q Did Parfield recommend that you cover the short sale?

A I don't recall. I think I just covered it because it didn't go down.

Q Mr. Anderson, I show you a document marked as Defendant's Exhibit 41, and I ask you whether you recognize

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that document, sir.

A It appears to be a copy of the Indicator Digest, yes.

Q Is that the same Indicator Digest that you testified about, sir?

A Yes.

Q Does the Indicator Digest register as an investment advisor?

A As far as I know, there is some language to that effect.

Q Specifically that is registered as an investment advisor, is that not correct, Mr. Anderson, page 8?

A It says "Registered with the SEC as an Investment Advisor," yes.

MR. DIAZ-CRUZ: Your Honor, I offer Defendant's 41 in evidence.

Q Mr. Anderson, at one point specifically as of February 1, 1967 did you, sir, or any of the Anderson interests register or subscribe, rather, to the Income Builder?

A That was a subscription that I think the partnership split costwise. That was about the end of the period of the subscription.

Q That subscription, sir, was effective at least

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. (0 7-4580

as of February 1, 1967; is that not correct?

A I think it began about a year ago and expired about that time, but I am not sure.

Q Did you, sir, looking at -- showing you Defendant's Exhibit 8, did you, sir, send that document to Mr. Bancroft?

A Yes, I believe I did.

Q Is the Income Builder also not registered as an investor advisor with the SEC, sir?

A It says at that time it was registered as an investment advisor, yes. I don't know anything about it currently.

MR. DIAZ-CRUZ: Your Honor, I offer Defendant's Exhibit 8 in evidence.

Your Honor, we have no further cross examination.

THE COURT: Any redirect?

MR. DEVINE: I have just one or two quick ones, your Honor.

REDIRECT EXAMINATION

BY MR. DEVINE:

Q Mr. Anderson, after July, 1968, with the exception of this Ebasco situation that you testified about, did Parfield and Company render any investment advisory or investment counseling services to the Anderson

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

JOHN PEIRCE CHASE, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVINE:

Q Mr. Chase, are you an officer of Chase, Incorporated?

A John P. Chase, Incorporated, yes.

Q We have been referring to John P. Chase, Incorporated here as Chase, Incorporated for shorthand, and I hope you don't mind.

A No.

Q What is your present office with that company?

A Chairman of the Board.

Q When did you first become an officer of Chase, Incorporated?

A 1932, July.

Q Have you held an office of Chase, Incorporated continuously from 1932 until the present time?

A Yes.

Q From 1966, let's say September of 1966, through the present time, what offices have you held?

A Chairman of the Board.

Q Continuously throughout that period?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Yes.

Q In that same period of time have you continuously been a Director of John P. Chase, Inc.?

A Yes.

Q Throughout 1966 Chase, Incorporated described itself as investment counsel, is that correct?

A Yes.

Q Do you have any knowledge as to what prerequisites a firm, an investment counseling firm, must meet in order to use that title?

A I believe I do.

Q What is your understanding of the prerequisites for using that title?

A We have to be registered as investment advisors with the SEC, members of the NASD. We look upon ourselves as professionals and, therefore, have to be staffed by the quality of personnel, by experience and otherwise, that is capable of fulfilling their responsibilities.

Q What does the phrase "investment supervisory services" mean to you?

A Well, that has different connotations, I think, to different people. It is a generic term in the way it is used in the trade, but it has come, I think in more recent years to signify a certain measure of thoroughness

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

in the handling of other people's money.

Q What measure of thoroughness does it signify, in your understanding?

A It means to me that when you assume the responsibility of managing other people's money one of the first things that we try to determine is exactly what the investment objectives of the individual are, whether in our opinion they are proper investment objectives in relation to what knowledge may be supplied to us by the client, and this includes many things. I think that the degree of responsibility for determining all the material facts as to the individuals, the client's financial background becomes greater when you have discretionary authority than when you are only acting in an advisory capacity.

Q Does the phrase "investment supervisory services" mean anything to you with respect to the continuity of advice, continuity of counseling?

A Yes.

Q What does it mean to you in that respect?

A It means exactly that, continuity.

Q It means that the counseling is to be continuous? Is that your understanding?

A Counseling in that sense, yes, continuous.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Are you aware of the phrase "investment supervisory services" having any technical meaning?

A No.

Q Do you know of any statutes or regulations of any kind which speak of investment supersisory services?

A Yes.

Q What statutes or regulations do you know of in that category?

A I can't tell you exactly, but the SEC has used that terminology.

Q Are you familiar with the terminology that the SEC has used in that context?

A I am familiar with the ADV form.

Q I show you Plaintiff's Exhibit 43, and you can take a second to look at it, of course. My question is, is this a true copy of a document filed by Chase, Incorporated with the Securities and Exchbnage Commission on or about December 30, 1968?

A It would appear to be.

Q I direct your attention to page 3 of that document, please, and specifically to question number 18, and the answers to that question, particularly sub A and sub B. My question is, was the answer to those two questions, which is shown on that document, true at the

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time that the document was filed, to the best of your knowledge?

A Yes.

Q I show you Plaintiff's Exhibit 44, and ask if that is a true copy of a document which was filed by Chase, Incorporated with the Securities and Exchange Commission on or about June 18, 1969.

A I don't have a reference date here, but it would appear to be in that neighborhood, yes.

Q Again I would direct your attention to page 3, question and answers 18 A and B. The question, again, is, was the answer given by Chase, Incorporated to those two questions true to the best of your knowledge at the time that the document was prepared and filed?

A Yes.

Q When did you first speak to Mr. Anderson regarding the Anderson account?

A I believe it was in September 1966.

Q Do you recall whether that was a personal meeting or a telephone conversation?

A My recollection was the personal meeting which was preceded by a telephone conversation.

Q Do you recall what was said in the telephone conversation and by whom?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Mr. Anderson called me and said he had some financial problems he would like to discuss with me.

Q Was a meeting set up?

A Yes.

Q Did that meeting subsequently take place?

A Yes.

Q Where did the meeting occur?

A In my office.

Q Was that in September of 1966 as well?

A I believe it was.

Q Was anyone present at this meeting other than you and Mr. Anderson?

A No.

Q Would you tell us as completely as you can recall what was said at this meeting and by whom it was said?

A Mr. Anderson said that his father had died since I had last seen Mr. Anderson, and that he had become responsible for the finances of the family, and he wanted to talk to me about it to see whether it might be advantageous from his standpoint to employ the firm of John P. Chase, Inc., to help him in that capacity.

Q Do you recall what you said to him in response to that, if anything?

A I asked him a number of questions as to, first

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

of all, why did he come to John P. Chase, Inc. There were many other firms he might have gone to. My recollection is that he knew me and had followed the record of the Chase Fund of Boston, which is one of our mutual funds, had been impressed by it, and thought perhaps therefore the firm could be helpful to him. He told me about three separate accounts, his mother's account, the trust account, and the Anderson Company account. He gave me rough figures as to the total.

A I told him that the total was too small for us to handle as a regular investment counsel account, that we had a minimum figure of $500,000. The figure, as I recall it, of the three accounts was somewhat less than or approximately one half of the minimum.

He then told me that there was some Cambridge real estate property that he was in process of trying to sell, or sell securities based on those properties, and he expected before the end of 1966 to receive sufficient additional proceeds to bring the total up to meet our minimum requirement.

He also, as I questioned him as to what type of accounts they were, what investment objectives they had -- as I recall it, he said the trust account was probably the most conservative one, with which I agreed, because it was

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

a trust account; that his mother's account, there was a requirement for income but he still wanted to try to make it appreciate as much as possible, and the Anderson Company account was the most aggressive, and the requirement for income was minimal.

He then asked me about how I viewed short selling and margin accounts, and I asked him, "Have you been using margin in the management of the account?" and he said "Yes, I have."

I told him that this was against the policies of our firm, that I would not take a margin account, and I would not undertake the management of any account where short selling was a part of our responsibility.

He said, "Well, will you make an exception as to the margin during the period that it takes me to sell or dispose, in one way or another, the Cambridge real estate property, which would then bring the size of the account up to your minimum of $500,000?"

I told him if it was really just a matter of a month or two before this money would be available that I would be willing to make that exception.

I gave him, I believe, some of our written brochures, told him about our method of operations, what our investment philosophy was, and suggested to him that

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

he take that material back with him and think it over, and if he still was interested, that I would be glad to hear from him again.

Q Do you recall any discussion at this meeting with respect to the methodology or proposed methodology that the Anderson accounts would employ to get the size of the accounts up to the Chase, Incorporated minimum?

A The only way that he indicated to me he was going to get them up there was through the sale of the real estate properties.

Q Did he make any statement to you as to the time when the properties were to be sold?

A He said, and I just so testified that he expected to complete the deal before the end of 1966.

Q At the time of this meeting did you explain to Mr. Anderson the methods and procedures that Chase, Incorporated would use in counseling the Anderson accounts if they were undertaken?

A No, I -- well, to some extent, yes. As I have just testified, I gave him our basic investment philosophy, the manner of operation within our firm, all the way from the polict committee to the research committee, through the securities selection committee and through the counsel managers, and I asked him specifically whether we would

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

have authority to run the accounts or whether he was going to retain that authority, and he told me that we would not have authority to run it. I asked him whether we would place orders with his broker, and he said no, he would place the orders with the broker. I said "Therefore, it will not be a discretionary account?" And he said, "No, that is not what I am looking for. What I am looking for is to have a flow of advice from John P. Chase, Incorporated that I can use and apply to the management of these accounts."

Q Did you explain to Mr. Anderson the way in which the committees that you have described and the research department at Chase, Incorporated worked, and the ranking and rating lists which were the end product of that work?

A I don't believe I went into the rating lists at that first meeting, no.

Q What did you tell him about the operations of the policy committee and the securities selection committee and how they related to the research department?

A What I believe I told him was that the policy committee was the top committee, and the way of determining policy for the firm. That committee concerned itself with long range and short range economic, social, political

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

trends, which we referred to within our firm as the Trade Winds. We studied those constantly to try to determine what we believed those trends were, what the impact of those trends would be on different types of securities and different industries.

Having determined what we felt the then current conditions dictated as far as the attractiveness of different industries were concerned, those favored industries were then brought to the research department and the research department was instructed to devote their primary attention to the study of the favored industries, and the selection of the most attractive stocks within those favored industries.

The research department following their studies would then bring their recommendations to the securities selection committee, which reviewed the research department's findings. The securities selection committee would make a judgment as to the individual securities that they would approve for the approved list, and then subject to a final check by the policy committee, that decision became a fact.

THE COURT: Were the Trade Winds just a term that you used, or was that a publication that you circulated to your clients?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Your Honor, we adopted that title to the publication that I wrote aside from this, but within the organization we referred to these as Trade Winds, these long-term social, political, economic trends.

Q In th5 Chase, Incorporated system that you have been describing, is it fair to say that the "A" Approved List and the Approved List are the end product of the work of the securities selection committee?

A Well, it was one of the prime reasons for the securities selection committee's existence, that's correct.

Q Were the "A" Approved lists and the Approved lists the result of the deliberations of the securities selection committee and were they the documentary material which the account supervisors would see as a result of the operations of that committee?

A Yes.

Q Was that the source of the information which the individual account supervisors had with respect to the deliberations of the committee?

A One of them.

Q What other ones did they have?

A These meetings took place, of the securities selection committee, every week, and some times more often, as occasion warranted. Almost without exception, within

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

24 hours of the securities selection committee meeting there was a meeting of the account managers where the new material stemming from the deliberations of the securities selection committee were gone over in greater detail, the reasoning behind why such and such a stock was put on the list, what its attributes were, type of accounts that would seem particularly appropriate, and so forth.

Q I take it that the meeting would also discuss which securities had been taken off the list and why, and which securities had changes in estimated earnings, and things of that kind, is that correct?

A Yes.

Q Going back to your meeting with Mr. Anderson in September of 1966, do you recall any discussion with respect to the interrelationship between Chase, Incorporated and the Chase group of mutual funds?

A Only within the context that Mr. Anderson had said he had been particularly impressed with the performance of the Chase Fund of Boston and wanted to know whether he could expect the raw information that flowed to the determination of decisions for the Chase Fund to be available to an individual account, and I told him that there was a common denominator within the firm, which was the policy committee, the research department and the securities

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

selection aommittee, and what came out of the deliberations of those three organizations became available to the fund managers and the account managers.

Q In your meeting with Mr. Anderson did you ask for any information about the Anderson accounts or the owners of those accounts?

A You must recall that I didn't have any idea at this juncture whether they were going to employ us. All I asked was what was the nature of the accounts, what type of investment objective he was looking for, but I did not at that juncture pursue that matter.

Q You said that it was the policy of the firm not to counsel margin accounts. Is that a fair statement of what you said?

A That's right.

Q What was the reason for that policy, in 1966, as you understood it?

A We believed the hazards of the stock market were adequate without accentuating it with margin.

Q Did I understand your testimony to be that you told Mr. Anderson that the accounts would not be accepted if they operated margin brokerage accounts?

A It was on that understanding -- he told me they would not be except for the exception I made during the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

period which I expected to be about two months in which he would borrow money prior to the disposition of the Cambridge real estate.

Q In retrospect, for what portion of the time period from September 1966 through February of 1971, did the Anderson Company have a margin brokerage account?

A A margin brokerage account?

Q Yes.

A I don't know.

Q You have no idea?

A I didn't know where the money was coming from, whether it was mortgage money, whether it was borrowed from this source or another. I had some idea that there were borrowings, and I was very much concerned with the fact that when Mr. Anderson showed me the prospectus of how he intended to raise the money to get out of debt on the original borrowing -- I told him, I think I used the expression, "I don't think this is salable, what you have put together." He asked me about that and I gave him my reasons why I thought it was not salable, and this bothered me very much because I had been given to suppose from his original statement that there would be no debt by the end of 1966.

Q We will come back to that brochure in a minute.

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For the time being, I want to focus on the margin accounts. Do you have any idea in retrospect for what portion during September of 1966 through February of 1971 Mrs. Anderson had a margin brokerage account?

A No, I can't tell you that.

Q Throughout that period were you a back-up man on the counseling of the Anderson accounts?

A That's right.

Q And you can't recall whether there was a margin account?

A I told you I think there was, but you said exactly what percentage of the time, and I can't tell you.

Q What is your best recollection as to what periods of time there were margin accounts and what periods of time there were not?

A I can't answer that.

Q Was there ever a time between September of 1966 and February of 1971 when you received a duplicate monthly statement from a brokerage house for either Mrs. Anderson or the Anderson Company which showed a margin account open, when you called Mr. Anderson and said "You still have this margin account," or "I see you have a margin account" and instructed him it was to be closed?

THE COURT: That is a lot of questions all in one.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Did you get the brokerage statements in November and December of 1966 and January and February of 1967 for Mrs. Anderson's account?

THE WITNESS: I don't believe -- I don't think we did, your Honor, because we really didn't start -- our first recommendations, I believe, didn't go out until December. All we had to work on was the list of securities that accompanied Mr. Anderson's letter, I believe, of October 5. These were the securities that he was going to make available for our management.

THE COURT: What is your best recollection as to whether, if ever, Chase, Incorporated received, initially received, a monthly statement of account for either the Mrs. Anderson account or the Anderson Company account? When did that come to your notice?

THE WITNES: I don't believe I can answer that, because Mr. Bancroft was managing the account and those statements, if they came, would have come to him.

THE COURT: All right.

Q Was there ever a time when Mr. Bancroft came to you and told you that he had received a monthly statement for either account, and that it showed a margin account open?

A I don't recall that he did.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Was there ever a time when Mr. Spindler came to you and said anything of that nature?

A I don't recall so.

Q Was there ever a time when Mr. Inches came to you and said anything of that nature?

A I would say no, but in saying "No," why I think this may be an unclear answer to relation to the whole situation, and with the Court's permission, I would like to enlarge on that a little -- the question of a margin account and short positions became very intermingled during this period, and it was extremely difficult to know exactly what the free cash position, if any, was at any given time after deducting margins or other borrowings.

Q For the moment, we are talking about the margin account. Do you recall whether it was the practice of Eastman Dillon in issuing its monthly statements to show a portion of its statement with respect to the margin account and a different portion of its statement with respect to the short account?

A I don't think I ever saw the Eastman Dillon statements.

Q As back-up man on this account, was it not your practice to review the monthly statements for the accounts?

A No, we worked from the black book. There is no

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FOLEY SQUARE, NEW YORK, N.Y. (212) 374-8080

reason for me to go back to the broker's statement.

Q Was there any notation at any time made in the black book with respect to whether a particular position, a security position, was in a margin account or in a short account? Does the black book distinguish between those things?

A Yes.

Q In your review of the black book --

A Excuse me, you asked two questions there.

Q I am sorry. I have a tendency toward that. I will rephrase it.

A When I answered the question I was answering the last question, which was short accounts.

Q Let me see if I can do the one question at a time.

Did the black book distinguish between cash accounts and margin accounts with respect to securities positions of the Anderson accounts?

A I don't think the black books indicated -- no, the black books, to the best of my recollection, did not indicate what securities were on margin and what were not. It was the list of securities we were managing.

Q How often did you review the black book during the September 1966 to February 1971 period, and I am

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

referring to the black book for the Anderson accounts.

A Personally?

Q Yes, personally.

A Not very often except as the primary person on the account may have come to me to ask advice or consultation.

Q Do you have any recollection as to how often that occurred, how often you were asked for a consultation?

A Well, Mr. Bancroft was handling for a short period of time, we were just getting the account started and it was quite frequent. While Mr. Spindler was running it, I don't know that I ever had any consultation with him on it. He was quite capable of managing an account.

Q I take it Mr. Bancroft was as well, is that true?

A Well, yes, he was, but Mr. Spindler was a senior officer, Mr. Bancroft was not.

Q During the period when Mr. Inches was the account supervisor, how often were you asked for a consultation?

A We spoke reasonably often about the account.

Q Did you review the black book on those occasions?

A Sometimes I did.

Q With respect to the Cambridge real estate, was it indeed sold by the end of 1966?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Not to my knowledge

Q Did you ask Mr. Anderson in December of 1966 or in January of 1967 if it had been sold?

A I didn't ask him if it had been sold, because he told me it had not been, he had not been able to sell it.

THE COURT: Mr. Devine, I have been looking at the statements of the Alice Anderson account through the period -- through this first period through February and I don't see any evidence that that was a margin account at any time.

MR. DEVINE: All the way through 1971?

THE COURT: No. You asked this witness whether he got statements of account along towards the inception of the business, with the inference, conveyed to me, that there was a margin account that Mrs. Anderson was running, and there is no evidence of that at all.

MR. DEVINE: My question spanned a five year period, your Honor.

THE COURT: Is it agreed that it was not a margin account at the time of the inception of the counseling service?

MR. DEVINE: Apparently there was not, your Honor. It came about at a later time.

Q Do you have any recollection as to whether Mrs.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Anderson established a margin account?

A No.

Q When was it that Mr. Anderson told you that the Cambridge real estate had not been sold?

A When he came in to talk to me about the brochure.

THE COURT: Let's go to the other one, the Anderson Company account. That shows no evidence of having been a margin account either at the inception of the counseling services or during that first 4-month period. What is all this talk about taking over a margin account? There was no margin account in either account.

MR. DEVINE: I was inquiring about the full time period, your Honor.

THE COURT: I don't think that was the way it was conveyed to me. Neither of these accounts was a margin account, isn't that the fact?

MR. DEVINE: At a point in time --

THE COURT: At the time this firm was hired, and Mr. Anderson wanted to know what about short sales and what about margin and the witness has given testimony on that, but neither was the fact at the time when the accounts came in. I don't want to be confused about the facts in this case. They are all subject to verification.

MR. DEVINE: I didn't mean to confuse you, your

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Honor. I did ask about the five years period.

THE COURT: It is perfectly clear neither account at any time during the first four months of its inception was a margin account regardless of when the Cambridge property was sold or to be sold, isn't that the fact?

MR. DEVINE: I think that is correct.

THE COURT: The Cambridge brochure as December 1966?

MR. DEVINE: Yes, that is true.

THE COURT: So all the talk about margin and liquidating the Cambridge property had nothing at all to do with either account at the time that they hired the services.

MR. DEVINE: Could I have Plaintiff's Exhibit A, please?

BY MR. DEVINE:

Q Is this the brochure you are referring to, Mr. Chase?

A If it wasn't this one, it was similar to that.

Q When was it you first saw that?

A I believe it was in December.

Q 1966?

A 1966.

Q How was it that it came to your attention?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Mr. Anderson sent it to me.

Q Did you generally discuss that document with Mr. Anderson?

A He asked me what I thought of it.

Q Was this at a personal meeting?

A I don't recall whether he sent it in the mail or whether he brought it in in person.

Q I think you testified earlier what you thought of it and what you had said to Mr. Anderson on that subject, but tell us anything else you recall being said at that time.

A I don't believe I have anything to add.

Q During calendar 1967, was the Cambridge real estate sold?

A My understanding was they borrowed against it and that is where the money came from.

Q When did you obtain that understanding, when did you obtain the information which bases that understanding?

A I believe Mr. Anderson told us that is where the money came from, this was the condition of taking on the account, that the money would be forthcoming, and he didn't get it from the method that he originally outlined, and then I think he said it was from bank borrowing or

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

mortgaging to produce the money to add to the account.

Q Is it true there were essentially three sources of the additional funds which were required to bring the accounts up to the Chase, Incorporated minimum?

A I have heard that statement. It wasn't my business to determine where they were getting the additional money.

Q Did there come a time when you learned the Cambridge real estate had been mortgaged?

A I don't remember when I learned of it. I know I was -- at least I believe I was told that at some subsequent time.

Q Did there come a time when you learned that Mrs. Anderson's house had been mortgaged?

A Many years later.

Q Did there come a time when you learned that bank borrowings had been undertaken against the security of investment securities?

A Will you ask that question again? Bank borrowings --

Q Did there come a time when either Mrs. Anderson or the Anderson Company borrowed money from any banks and pledged as security for the borrowing investment securities?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I was told that much later, but I didn't know it at the time nor was I advised to that effect.

Q Did there come a time when you learned that either the Anderson Company or Mrs. Anderson had borrowed money from brokerage houses by purchasing securities and margin?

A I believe, as I was told by those managing the account, that some of the brokerage accounts indicated margin accounts in their monthly statements.

Q When you learned these things did you cause the relationship with the Anderson accounts to be terminated?

A No, but I did contact Mr. Anderson.

Q When first did you do that?

A I told him that I thought he had broken his original agreement with me that there would not be a margin account, with the sole exception that I have already testified to during the two-month period he was waiting to get the proceeds out of the Cambridge real estate.

Q When first did you tell Mr. Anderson that?

A The first time that I knew -- when I was made aware, at least, of the fact that they were running margin accounts.

Q When was that, to the best of your recollection?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I can't tell you.

Q What did Mr. Anderson say to you at that time?

A One of about three times he said he was going to be a good boy, wasn't going to do it any more.

Q Were those his exact words?

A I guess we would have to call that a paraphrase.

Q Did you on each occasion check thereafter to see if the margin account had been closed, or if the mortgage on the real estate had been eliminated, or if the bank borrowings had been eliminated?

A Bank borrowings and real estate mortgaging was not a part of our concern.

Q I show you Plaintiff's Exhibit 6, and Plaintiff's Exhibit 7. With respect to 6, is that your signature which appears on the letter?

A Yes.

Q Did you send that letter to Mr. Anderson having pre-signed it?

A I don't recall whether I pre-signed it. I might well have done so.

Q Do you recall whether you received the letter which is Plaintiff's Exhibit 7 from Mr. Anderson absent the handwritten material?

A Except for this (indicating).

SOUTHERN DIST...CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY ...UARE, NEW YORK, N.Y. CO 7-4580

Q Except for the handwritten material, yes.

A I remember the letter.

Q At the outset of the Chase,Incorporated counseling of the Anderson accounts, did Chase, Incorporated to your knowledge obtain information with respect to the owners of the Anderson accounts, financial information, background information, of any kind?

A We did within this framework. Mr. Anderson told me that he was going to run the accounts. We had no discretion over the running of those accourts, we had no right to place any orders. The understanding, from my standpoint, was that we were to give him recommendations within the broad framework that he had outlined as to the investment objectives of the three funds. Under those circumstances, we were not going to go back and ask about insurance policies, whether they had a rich uncle or a grandfather's trust or any of the many things that we would have normally requested if we were to assume the kind of responsibility that comes from having discretion. He had told me specifically that was not the kind of service that he wanted, he wanted a flow of recommendations to him.

Q When you say run the accounts, what do you mean by that?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A Perform the type of service that we understood that the contract called for, and the type of service that Douglas Anderson had stated that he wanted.

Q As I understood your testimony, you said Mr. Anderson was going to run the accounts. Are you now saying that he was going to render that service to himself?

THE COURT: I think I have it clear as to what the witness said, and this question is argumentative. He made it perfectly apparent that the one was going to place the orders and make the decisions and the other was going to render counseling within the framework of the investment objectives outlined.

Q Was it the policy of Chase, Incorporated not to obtain background information about accounts where discretion was not given to place brokerage orders?

A No, it was not a policy; it was a question of judgment of the account manager as to what was necessary in relation to the particular account.

Q Was there a policy to obtain -- a positive policy to obtain information about non-discretionary accounts?

A I feel I have answered that.

Q Let me see if I can make myself more clear. With respect to the Anderson accounts, you have testified

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that no information was obtained about the background and financial status of the accounts and, as I understood it, the reason for that was that the counsellor --

THE COURT: I don't think that was the testimony at all.

MR. DIAZ-CRUZ: I object to counsel characterizing --

THE COURT: That was not the testimony at all. You were not asking him about financial information about the account. You were asking about financial information about the people involved.

MR. DEVINE: That is what I meant to say here, your Honor.

THE COURT: But you didn't say that.

MR. DEVINE: I am sorry. I will rephrase it.

THE COURT: Let's cut this short: Why didn't you think it was necessary to find out about the principals of Anderson Company or about Mrs. Anderson beyond listening to her son?

THE WITNESS: Because he told me he had full power of attorney to act for her and when he told me that these were the investment objectives that he wanted us to address ourselves to in the management of the account, I felt that was the authority that we needed to act within

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

the framework of our contract.

THE COURT: All right.

Q Did you feel it was necessary or appropriate to know the nature and amount of Mrs. Anderson's income unrelated to investment securities?

A No, I didn't, for the very reason I have just stated: this was a judgment her son had made under his power of attorney, as I understood it. I didn't know what other sources there might be. This was the framework in which we accepted the account, and I think that is my answer.

Q Did you feel it was necessary or appropriate to know what the expenses, the living expenses, of Mrs. Anderson were?

A No, I didn't, in this case.

Q Did you feel it was appropriate to know what her other assets were, those assets which were not in the account?

A The answer is no.

Q Did you feel it was appropriate to know what her debt was, her borrowings, other than anything that may have been disclosed in her account?

THE COURT: There was no debt disclosed in the account, as we saw at the beginning here. What happened

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

later on we will take up as we go to it. There is no use in asking questions that refer to the inception of the business and then tell me that you are talking about five years.

MR. DEVINE: I withdraw that, your Honor.

Q Did you feel it was necessary or appropriate to know the outside debt or borrowing, if any, which Mrs. Anderson had at the inception of the accounts?

A Yes.

Q Did you make inquiry on that subject?

A Yes.

Q How did you make that inquiry?

A In personal conversation with Mr. Anderson.

Q Through the five year period that this counseling arrangement was in effect, did you continue to believe that that information was necessary or appropriate to the counseling of the account?

A Yes, and I felt it was incumbent upon the client to keep us posted as to changes within the framework of the inception of the account.

Q You did not feel there was any obligation of Chase, Incorporated to make inquiry periodically on that subject, is that correct?

A No.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q It is not correct? I am sorry, the question was poorly phrased. Let me try it again.

In the five-year period that the accounts were in effect, did you feel it was necessary or appropriate to inquire on a regular basis with respect to the outside debt and borrowing, if any, of Mrs. Anderson?

A My answer was no. I think we had a right to rely on the one that held the power of attorney to keep us current after he had made the original statement as to his mother's position. If it changed materially, I think it was up to him to advise us and not for us to be boring into our client's accounts repeatedly.

Q Was there ever a time between October of 1964 and February of 1971 when Mr. Anderson or Mrs. Anderson refused to provide Chase, Incorporated with any information of any kind which was requested by Chase, Incorporated?

A No.

Q Did there come a time when the so-called black book was set up for the Anderson accounts?

A Yes.

Q When was that?

A Almost from the inception.

Q I show you Plaintiff's Exhibit 45, and ask if that is the black book for the Anderson account?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

in my handwriting.

Q Do you know what Mr. Bancroft's purpose was in preparing these documents?

A Different account managers work different ways. I would call these work sheets, that is all.

Q Was it Mr. Bancroft's practice to bring those work sheets to you and review them with you?

A He did in the beginning, when we were setting them out, and if I was available, he would normally do it subsequently.

Q Do any of those sheets refer to borrowings that either the Anderson Company or Mrs. Anderson had, and I refer specifically to bank borrowings?

A Yes, I see under the heading of the Anderson Company, "Reduced bank loans in the amount of $15,000." In other words, our sale program exceeded our purchase program in order to reduce the bank borrowings.

Q Subsequently was a recommendation made to either Mrs. Anderson or the Anderson Company which included a recommendation to use the proceeds of particular sales in order to reduce bank borrowings?

A Excuse me, would you ask that question again?

THE COURT: He wants to know whether, although he said Anderson Company and Mrs. Anderson, in relation

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to an Anderson $15,000 borrowing, whether a recommended sale of a security carried with it the suggestion that the $15,000 debt to the bank be liquidated.

A Yes. It says on it here "Eliminate bank of New York loan, 7,000; reduce the State Street loan by 8,000," that is a total of 15, "leaving State Street loan at 12,000 as the only bank loan."

Q Did you discuss with Mr. Bancroft this recommendation to reduce bank loans?

A He did it on my instructions.

Q Do you recall what was said in that discussion or those discussions?

A No. I said I wanted to get the account out of debt.

Q Was there ever a time generally when you discussed with any of the other account supervisors on this account the status of debt or the appropriateness of recommending a reduction in debt?

A I can't be specific as to time, and so forth, but it was understood throughout our period of relationship with the Anderson Company that we were unhappy with any debt of any kind, and one of the big problems we had was trying to keep current with just what really constituted free funds and what represented transfer of funds from

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

borrowings outside. This was one of the big headaches we had in trying to do what we felt was an effective job.

We also, I might add, found it very difficult in functioning in the normal process of making specific sale programs and purchase programs when many of our recommendations were not accepted by Mr. Anderson. In fact, in later periods, why, it became increasingly independent action on his part, so that our recommendations we felt were becoming increasingly meaningless.

Q What was the nature of the difficulty which you testified before with respect to the, I think you said, transfer of funds?

A Money kept being added or taken out of the accounts. We never really knew what the money was being used for when it went out and we didn't really consider it our business to know. They had a right to do anything they wanted with their money. Money would come back into the accounts and in many cases there was no explanation whether it came from bank borrowing or mortgage or whatever it might be.

Q Did Mr. Anderson ever refuse to tell you what the source of new money was, or what the use of outflowing money was going to be?

A No, I don't think he refused to. I don't think

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

we considered it our business how the Andersons ran their personal affairs.

MR. DEVINE: Your Honor, could we staple this exhibit?

THE COURT: I will look at it first.

THE WITNESS: I should add, if I may, it is not our business how they run their personal affairs provided they stay witnin the original terms of agreement te which we accepted to manage their accounts.

Q I show you Plaintiff's Exhibits 11 and 12. To the best of your recollection, do these documents reflect the initial recommendations which were made to the Anderson accounts?

A Yes.

Q With respect to Plaintiff's Exhibit 11, which is the colored forms, were forms of that kind standard in Chase, Incorporated's operations in December of 1966?

A Yes.

Q Does Chase, Incorporated have a similar type of form in effect today?

A Yes, it has similar forms.

Q Was this form or a form similar to it continuously standard between December of 1966 and today?

A Depending on the type of account, what the

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FOLEY SQUARE, NEW YORK, N.Y. (212) 791-1020

account -- what the client wanted and what the agreement was between the client and ourselves.

Q Was there a time between December of 1966 and February of 1971 when the type of account that either of the Anderson accounts was changed?

A I don't think the type of account changed; the type of service we found we were able to render changed perforce of circumstance, and by agreement with Mr. Anderson stemming from two periods, one when we agreed to take back the Anderson Company account, and I believe that was in July of 1968 -- I again reiterated to him that I would not take the account back unless he would at once begin to adhere to the basic agreement that we had about no margins and no short selling. At a later time, when Mr. Spindler took on other duties in charge of the institutional department and Mr. Inches took over the account, the question then was whether we would continue the account at all. My recollection was that Mr. Spindler felt that the account should not be continued, that it was too difficult to keep track of what was going on and the nature of the operation was such that increasingly very little attention was given to any recommendations of this form that went out (indicating). Thus, when Mr. Inches took over the account I told him that I wanted him

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to have a talk with Mr. Anderson to come to an agreement, if they could, as to what kind of service he really wanted us to render. My recollection is that I told Douglas Anderson at th5 same time I wasn't going to continue the account unless there was some kind of agreement reached that was mutually acceptable. They went out to lunch, I recall clearly, and I think they were gone for at least two hours. When they came back, I asked each of them individually whether they had reached a modus vivendi, if you like, by which they had agreed on the type of service that the client wanted and whether the service he wanted was a service that we felt that we could render to him.

Each of the two gentlemen, Mr. Anderson and Mr. Inches, said they had had a meeting of minds and I therefore said, "All right, we will try it on that basis," and it was within that context that it was agreed at that time that recommendations which normally in our accounts are made in any one of three ways, namely, in writing, by telephone or by personal contact -- it was agreed at that juncture that the recommendations in writing would not constitute a part of the service, that what Mr. Anderson apparently wanted was verbal and personal contact with Mr. Inches in order to get the benefit of our policy committee's basic investment policies,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

our research department's findings and our securities selection committee's materla. This didn't mean that he was entitled to receive all of this information, far from it, but he was entitled to ask questions and to the extent that we had covered the stocks that he was asking questions on, we would be glad to give him that information and, in addition, we would give him recommendations of particular stocks that we thought were attractive at any given time, and we would give him in our regular reports our thinking with respect to the economic and stock market outlook.

Q Prior to December of 1968 were the forms of the type which are Plaintiff's Exhibit 11 in use with respect to the Anderson account?

A Prior to what date?

Q December of 1968.

A I believe that they were on all specific recommendations. There were many other discussions of securities, and so forth, that were verbal and which were not reduced to writing.

Q When you say a specific recommendation, what do you distinguish it from? What is a non-specific recommendation?

A For example, Mr. Anderson might call up and whether he disclosed the source of his inquiry or not is

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

not too material, but he might say that such and such a firm is recommending such and such a stock, and ask what we thought of it. We would say "We think well of that company," I would call that a non-specific recommendation. If we initiate a recommendation , saying buy 300 shares of X, Y and Z Company on such and such an account, I call that specific.

Q If the answer to Mr. Anderson's question was "We think well of that company," which is I think what you said, would that mean that the securities should be purchased?

A If we thought it should be purchased, we would make a statement to that effect. Where he is asking what our opinion is of the company, that is something else again. What we wanted to avoid during this period was making positive recommendations, definite recommendations, involving a certain amount of money, so many shares to buy, when we didn't know where the money was coming from to pay for it, whether it was margin, short selling or whatever it was. We were unwilling to assume the responsibility of making that kind of a recommendation. We were willing to give him the benefit of our advice as to whether we considered a stock attractive or not. He had taken the management of the account, as he had from

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

the very beginning, obviously into his own hands to do exactly as he chose, whether it was in accordance with our recommendations or contrary to our recommendations, but in many instances we found that he asked questions about companies that he had already bought or sold prior to the time he asked us the question.

Q If the Chase, Incorporated supervisor said "We feel this security you are inquiring about is attractive" or he said "We think we will have that security," was there any expectation that Mr. Anderson would or would not purchase it?

A We were just answering his question, and this was part of the service that he asked for. In the agreement with Mr. Inches, my understanding was he wanted the right to call and ask questions about the attractiveness or unattractiveness of securities. We responded to those inquiries.

Q With reference to Plaintiff Exhibit 11, which shows a series of recommendations, is it fair to say that these recommendations were interrelated in the sense that the proceeds being generated by sale recommendations were applied to particular new investments or different investments?

A I am sorry, you lost me. I was trying to read

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. (212) 791-4580

this at the same time. I apologize.

Q With respect to that exhibit, Number 11, is it fair to say that the purchase and sale recommendations were interrelated in the sense that the sale proceeds had a proposed usage?

A Yes.

Q With respect to the conversation which you had with Mr. Inches after he had met with Mr. Anderson, will you tell us as completely as you can, without repeating what you said already, what you said and what Mr. Inches said at that time?

A I don't think I can recall in any greater detail than what I have already stated.

Q Was Mr. Anderson present when you spoke to Mr. Inches on that occasion?

A No.

Q I think you said you also spoke to Mr. Anderson at that time?

A That's right.

Q Was Mr. Inches present at that conversation?

A My recollection is no, I spoke to him individually.

Q Do you recall anything more about what was said and by whom, other than what you have told us already?

A I got the impression there was a mutuality of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

satisfaction with the discussion that had taken place between them.

Q Following these conversations, to the best of your knowledge was any notation made on any Chase, Incorporated document which reflected this change in the method of counseling?

A Not that I am aware of.

Q To the best of your knowledge, was any written confirmation made of this agreed upon change?

A No.

Q Was the agreement, the contract letters between the Anderson accounts and Chase, Incorporated, amended in any respect?

A No.

Q Were the SEC filings on Form ADV amended?

A No, we didn't feel any of those should be done. The basic agreement was still there. It was a question of what the individuals wanted. We were prepared to provide the full service but that was not what was being used.

Q I show you Plaintiff's Exhibit 53, which states at the top, "We have effected the following transactions." Do you see that language?

A Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Did there come a time at Chase, Incorporated when this type of form came into use on accounts such as the Anderson accounts?

A I think the best thing that can be said of this is that it was the wrong form that was used, because we never effected any transactions. This would only be used by a discretionary account. This was put on the wrong form.

Q Did you ever see that document, or the document from which it is a copy, before today?

A Only at the time of my deposition.

Q Do you know if the document from which that is copied is contained in the black book on the Anderson accounts?

A I don't know for a fact. I assume it is, or it was. We don't keep all going back to the beginning of an account. We take them back and file them separately, the old materials, so I don't know.

Q I show you the black book and a blue document in that book, which appears to be the document from which Plaintiff's Exhibit 53 is copied. Does that refresh your recollection as to whether you have seen that document before, before your deposition in this case?

A I think I probably did, yes, but I had no

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK N.Y. CO 7-4580

recollection of it. My recollection was when you presented it at the deposition.

Q Was there ever a time when you inquired of the account supervisor what the purpose and meaning of that document was?

A No, I would have no reason to inquire of the account supervisor in this case more than in any of the other 500 accounts being managed in the office.

Q What I mean to ask, in one of your reviews of the black book when you came upon that document did you have occasion to comment to the supervisor, "What is this? What is the purpose of this?" or anything of that nature?

A No. The account supervisor didn't even have to put this in here if he didn't choose to. It was probably for his own convenience. I would have had no reason to question him as to why it was there.

Q Do you know today what the purpose of that document was and why it was in the black book?

A I don't know why that particular one was put in there, no.

Q Do you know whether any of the other colored pages of that multi-page form were sent to either of the Anderson accounts?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I haven't got any idea whether they were sent out or whether these were just internally placed in the book.

Q I show you Plaintiff's Exhibit 32, and ask if you recall having seen that before today or, more precisely, I suppose, before your deposition in this case?

A I don't recall seeing it.

Q Do you today know what the purpose of Plaintiff's Exhibit 32 was in the Chase, Incorporated system pertaining to the Anderson accounts?

A Will you state that again, please?

MR. DEVINE: Maybe the reporter would read it back.

(Read.)

A I wouldn't say it was a part of the system. The account supervisor could well make use of this kind of a -- the heading is "The client has informed us of the sale and the following changes", and he might have deemed it a convenience to have all of those recorded on one sheet of paper and it might be helpful to the bookkeepers, too, in making the changes on the individual security cards.

Q Do you know if a copy of this document was sent to either of the Anderson accounts?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A No, I don't.

Q Did there come a time in 1967 when additional cash was generated by the Anderson accounts?

A I really can't identify when additional funds came in.

Q When was it that Mr. Spindler became the primary supervisor in the Anderson accounts?

A I believe about April 1967.

Q Do you know if at any time during 1967 Mr. Spindler prepared a program with respect to additional funds that came into the Anderson accounts, or either of them?

A I haven't got a recollection of that, no.

Q Did you have occasion during 1967 to review an initial program with respect to additional funds with Mr. Spindler as you previously had done with Mr. Bancroft?

A I think I have testified to that.

Q That you did not?

A I said that if I spoke to him at all, it was on very rare occasions.

Q Still with reference to 1967, were there divisions in Chase, Incorporated's counseling operation at that time?

A 1967?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. (212) 7-4580

Q 1967, yes.

A Divisions?

Q Yes, segments.

A Can you be more specific? I am not quite sure what you mean by divisions.

Q Were small accounts handled by people separate and distinct from those who counselled large accounts or mutual funds?

A Yes. There were, if you want to call it, internal divisions, all using the same common material to apply to the varying investment objectives for which they were held responsible. So we had the small accounts, the large accounts, and later the institutional accounts, and the funds.

Q How did the services rendered to the small accounts differ from those rendered to the large accounts?

A The small accounts, and I assume you are talking about the 25 to 500,000 --

Q Well, whatever was the fact in 1967.

A Those accounts had appraisal periods that were less frequent. They also were not entitled to the personalized service that the large accounts were entitled to, namely, calling up and talking to the investment advisor. Small accounts, we had full discretion,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007

we operated solely through registered representatives or brokers and they were the intermediary with the clients and the clients understood if we wanted to get questions answered they were to go to their broker, not to us. We were attempting to give to the little fellow as much as we could in the way of financial service, but the cost would have been prohibitive if we gave the personalized service we gave to the large ones.

Q Were the large accounts supervised by people separate and distinct from those which managed the mutual funds?

A Generally speaking, this is so, but people that were on the fund management team also handled some large accounts.

Q Was that true of Mr. Spindler? In other words, was he on the fund management team and also a large account supervisor?

A At one time, yes.

Q When was that?

A 1968, when he was on the fund management team for a period of less than a year, I would say.

Q Do you recall which part of 1968 that was?

A Well, I think it related to -- he went off of the fund management team at the time he became responsible

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

for the whole institutional department, which was late in 1968. I think he was -- well, I don't know, I think it was in the spring, the early part of 1968. He was on for, I would say, more than six months.

Q Was Mr. Inches on the fund management team and also a large account supervisor at any time?

A No.

Q With reference to the Chase group of mutual funds, what entity caused them to be created?

A What entity caused the fund to be created?

Q Yes

A The directors of John P. Chase, Inc.

Q Was there ever a time when a Chase, Incorporated subsidiary was in the business of selling to the public the stock of the Chase group of mutual funds?

A Chase Distributors operation, a wholly owned subsidiary, this was their responsibility.

Q Was that throughout the period from late 1966 through early 1971?

A I don't know what the date was when Chase Distributors Corporation became Chase Investment Services, but it changed the corporate name I think during that period.

Q Without particular reference to the name, is it

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

true that throughout that period a subsidiary of Chase, Incorporated was at all times in the business of selling the Chase group of mutual funds to the public?

A That's right.

Q How was the subsidiary compensated for its work in that respect?

A The subsidiary was compensated as a percentage of the sales commissions.

Q Throughout the period from late 1966 through February of 1971 was Chase, Incorporated the manager of the Chase group of mutual funds?

A That's right.

Q During that period how was Chase, Incorporated compensated for its services and fund manager?

MR. DIAZ-CRUZ: Your Honor, we object as to the relevance and materiality.

THE COURT: Sustained.

Q Between 1966 and 1971 did Chase, Incorporated have procedures governing the order of purchases and sales when a mutual fund and a large account were interested in the same security?

MR. DIAZ-CRUZ: Objection.

THE COURT: Sustained.

Q In that same period, from late 1966 through

February 1971 was it possible for a large mutual fund transaction to have an effect on the market price of the security in which the transaction was taking place?

A You are talking broadly? Any mutual fund?

Q Yes.

A Yes.

Q Was that also true for the mutual funds in the Chase group of mutual funds?

MR. DIAZ-CRUZ: Objection, your Honor.

THE COURT: What is the background purpose of this? Are there any specific recommendations that you say collide with anything that Chase did? They didn't do any purchasing, they had no discretion. The sheet that you have submitted yourself indicates a lot of transactions that were not under supervision. I don't know what you are getting at. I would like to give you broad latitude to establish what you say is a breach of the employment, or even a supposed fiduciary obligation, but what does all this have to do with this case?

MR. DEVINE: Your Honor, it is the plaintiff's position that because mutual fund transactions, often very large, can have an impact on market price, that there is necessarily an obligation on investment counsellors who are advising both individual accounts and mutual

SOUTHERN DIST. COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

funds to see that the market price effect of mutual fund transactions is not adverse to the other accounts that it counsels.

THE COURT: What does that have to do with any recommendation made by Chase to Mr. Donald Anderson?

MR. DEVINE: Your Honor, we feel that from public documents there is indication that the Chase group of mutual funds was transacting in securities which the Anderson accounts held during concurrent periods, and that the interrelationship of the transactions by the mutual fund and the positions and/or transactions by the Anderson accounts might have been adverse to the Anderson accounts.

THE COURT: There is not an iota of evidence of that to support your statement in the record. After examining the tax return schedules last night, which I am sure you have examined, it looks like the two accounts hit the skids when Mr. Donald Anderson went into his prolonged short selling, and that that is what caused the losses to these accounts of inordinate amounts, when he went short in 1970 on 34 transactions and 1971 on 87 transactions, reported in your tax returns.

If you are going to make any charges such as you have uttered apart from something you may have read in a

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

periodical, you lay the foundation for the specific security and the specific dealing of the mutual fund that you say was managed by Chase, else it is just a smoke screen and a red herring.

I will give you the full opportunity to do that, but you have no evidence whatever, not a scintilla, of any such situation, and particularly where the management of the account was conducted by Mr. Anderson, both on his testimony and on this witness's testimony.

BY MR. DEVINE:

Q Did you personally discourage conversations between large account supervisors of the following type, where one supervisor says to the other "I am recommending the purchase of a particular security at a particular price for a particular account," and in each instance names the security, the price and the account?

A It strikes me that is a rather hypothetical question, but if I may try to answer it this way, I never discouraged free discussion among any people in the organization. The only area we tried to stay away from was from one account manager discussing in detail, using names of their accounts, with others around the office. We tried to maintain as much privacy as possible in these matters. One of the problems is that when you discuss a

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transaction, such as the hypothetical one you set up, it is rather meaningless to have that kind of a discussion between two individuals unless both individuals are thoroughly familiar with all aspects of the individual account for which the security is being considered. What may be appropriate for one account, may not be appropriate for another. What may be appropriate for a fund with certain objectives may not be at all appropriate for a trust account such as the Anderson trust.

I don't know whether that answers your question, but I never have discouraged free and open discussion among any people within the organization.

Q What was the first occasion, to your knowledge, when a short sale was made in either of the Anderson accounts?

A I think the first one that I recall was the instance of Sherwin-Williams being sold short in 1967, late 1967.

Q Do you recall how that came to your attention?

A Mr. Spindler called it to my attention.

Q On that occasion did you speak to Mr. Anderson with respect to that short sale?

A I didn't. I think Mr. Spindler did. You will have to ask him about that.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y.

Q Are you familiar with a practice of making year end short sales for tax reasons?

A No. Excuse me, if you say am I familiar with it, that implies that perhaps I have practiced it or recommended it. I know some people have used that device, but we have never used it in our office.

Q Is there a reason why it is never used in your office?

A Well, number one, I think I made it crystal clear we don't believe in short selling. Number two, we don't want to be a party to a subterfuge from a tax standpoint.

Q With respect to the short sale in Sherwin-Williams, did you give Mr. Anderson any instructions or recommendations with respect to it? I mean you personally, rather than the company?

A I didn't.

Q Was there an interval in which Chase, Incorporated did not counsel the Anderson Company account?

A Yes.

Q When did that interval begin and when did it end?

A I believe it ran from December 31, 1967 until the latter part of July 1968.

Q When that interval began, in or about December

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

of 1967, did you speak with Mr. Anderson about it?

A The first time I knew about it is when a letter was received, which I believe was shown to me, that made a decision to terminate that account.

Q When you saw that letter, at any time shortly thereafter did you speak to Mr. Anderson about the contents of the letter?

A I don't recall that I did so.

Q I show you Plaintiff's Exhibit 16, and ask if you say that letter before it was sent to Mr. Anderson?

A Not to my recollection.

Q Did there come a time when the Anderson Company account was reinstated at Chase, Incorporated?

A Yes.

Q When was that? I think you said in mid 1968?

A I testified I thought it was the latter part of July, 1968.

Q At that time did you speak with Mr. Spindler about the resumption of counseling the Anderson Company account?

A Yes.

Q What do you recall being said and by whom at that time?

A Mr. Spindler indicated to me that he was

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FOLEY SQUARE, NEW YORK, N.Y. (212) 7-4580

reluctant to take the account back. Frankly, he thought it would be better if we terminated the other two remaining accounts.

Q Did you share that view?

A No, I think I unwisely, from 20-20 hindsight, urged that we give him another chance.

Q What else do you recall being said in your conversation with Mr. Spindler on that occasion?

A I think that clearly sets forth the basic interchange of conversation.

Q At or about the time of the reinstatement of the Anderson Company account, did you have occasion to speak with Mr. Anderson?

A Yes.

Q When was that?

A At the time we were making a decision whether we would take it back again.

Q That would be in July of 1968?

A I believe so.

Q Was that a personal meeting or telephone conversation?

A I believe it was a personal meeting.

Q Where did it take place?

A In my office, as I recall.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Who else was present other than you and Mr. Anderson, if anyone?

A Nobody, that I recall.

Q What was said on that occasion and by whom?

A My conversation, as I recall it with him, was to the effect that, "Doug, you have not lived up to the original agreements that prompted us to take on the management of your family accounts in late 1966, and we are not happy with the way it has been going. We don't feel you are getting the benefit of our services." And I restated my original position relating to margin accounts, short sales, and I said "There has to be a rededication of the elimination of those two practices," to which he agreed again, and it was on the basis of that that I unwisely persuaded Mr. Spindler to resume the responsibility for the management of that account.

THE COURT: I think we will take a recess now. The reporter has not had a rest since ten o'clock.

MR. DEVINE: I have been cognizant of that myself, your HOnor. My legs tell me.

THE COURT: We will take a recess now until two o'clock.

(Luncheon recess)

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that are mentioned in that sentence? By firm recommendation I think I mean what you testified this morning was a specific recommendation.

A If I might, I would like to have the February 26th letter from Mr. Anderson to myself.

Q Absolutely. I show you Plaintiff's Exhibit 27 (handing).

A I was responding to the last paragraph of Mr. Anderson's letter, where he said, "Thank you for the benefit of your thinking on this subject, for your perusal of historical income statements and our latest balance sheet. Thank you for the benefit of your thinking on this subject."

My response to that was, starting where you asked me to focus my attention, "Initially, we would be inclined to use the appreciation on the General Motors to offset losses on National Casket, Avnet and probably L.V.O." All three of those securities, incidentally, had been bought during that interregnum period and we wanted to clean it up. I would call that a recommendation.

Q A specific recommendation?

A Yes.

Q Did you ever follow up on the third sentence of that letter in which you indicate that Johnson & Johnson

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Scope and Syntex might be sold at a later date?

A This was a matter of tax considerations that Mr. Anderson presented. If we had taken those other losses, which we would have been inclined to, if we had been running the account, since I think we understand each other here, we would have gotten rid of all of the losses but that would have thrown the Anderson Company in a loss position, which he did not want to do. That is why that was separated and I said "At a later date it would be desirable to consider taking losses on Scope and Syntex against your Johnson & Johnson", and you said did I follow up on that?

Q Yes, did you ever tell Mr. Anderson the time had come to do that?

A I think he understood very well what I meant because I had discussed with him taking losses on all of them. This was at a later date and I probably should have said "After the end of your fiscal year".

Q When you state that if Chase, Incorporated had been running the accounts you would have been inclined to take all of the losses, what do you include in the category "all"?

A Just the [illegible]e that we are talking about here. Three we put in one bracket and two fall in after the

fiscal year.

Q Can you run through that quickly, by security, because there are six securities mentioned in that letter and you were referring to five.

A I beg your pardon, I meant six. The six, in the first bracket, National Casket, Avnet and L.V.O. -- no, excuse me, there are only five, National Casket, Avnet and L.V.O., and the other two are Scope and Syntex.

Q What about General Motors and Johnson & Johnson?

A They are the ones he is introducing into the account and those had profits in them, and it was a question of taking the losses on the loss securities and using them to offset the profits involved in selling either the Johnson & Johnson and/or the General Motors.

Q Did you inform Mr. Anderson that it was your view that all seven of the securities should be sold in the existing tax year?

A I consider that letter to say exactly that, and I think anyone of Mr. Anderson's knowledge of the securities business understands very well what I was talking about here.

Q You mean the letter indicates that all seven securities should be sold prior to April 30 of that tax year?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007

A Not at all. That is not what I said.

Q Then you misunderstood my prior question. My prior question was, did you tell Mr. Anderson that if you had been running the account you would have directed tnat all seven securities be sold in the existing tax year.

A In the discussion I told him I thought all five of the loss ought to be disposed of, but he made the point, valid, if you will, from his standpoint, he didn't want to show a loss on the Company account during that fiscal year. So I split the recommendations in two parts.

Q If the first part of your recommendation had been followed there would have been a loss in that year, isn't that correct?

A There would have been?

Q Yes.

A I don't think so. I think the General Motors profit would have -- well, I don't know what the Anderson Company's overall profit and loss position was, but I was told if we limited it to this part of the recommendation he could still show a profit on the Anderson Company account for the fiscal year.

Q Who told you that?

A Mr. Anderson.

Q When did he tell you that?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

A In the conversations that relate to this.

Q In the second paragraph of Plaintiff's Exhibit 28 you strongly recommend that Mr. Anderson make investments from Chase, Incorporated regular and "A" Lists. Were those lists being distributed to Mr. Anderson at that time by Chase, Incorporated?

A Not on a regular basis. He may have been handed one or more lists, I don't know, but as a general practice we do not distribute those lists to our clients.

Q Were the minutes of the securities selection committee noting changes in those lists being sent to Mr. Anderson on a regular basis?

A Have you seen any minutes of securities selection committee minutes?

Q Yes, they are an exhibit in this case.

A Minutes?

Q Yes -- we have been referring to them as that.

A I would be interested to see them. Those are never distributed, that I know of.

Q I show you Plaintiff's Exhibit 51, which are documents headed "Securities Selection Committee Meeting" and then a date. If it is incorrect to refer to those as minutes, you might tell me a better phrase.

A Those are not minutes. They are just the results

of the deliberations. I didn't mean to make a point of that, but we just show the ones that are approved to go on the list, those that come off and changes in ratings. I guess it is semantics as to whether it is minutes or not. I didn't mean to make a point of that.

Q Were these documents being distributed regularly to Mr. Anderson in March of 1970?

A I don't believe to Mr. Anderson or any other clients.

Q Did there come a time after March of 1970, after March 10 of 1970, when Chase, Incorporated began to distribute to Mr. Anderson the approved list, or the "A" Approved List, or the documents reflecting the results of the securities selection committee meetings?

A Not that I hnow of. If I had known of it, I would have disapproved of it.

Q Going back to your letter of March 10, 1970, where you suggest that Mr. Anderson stick to the lists or select securities from the lists, which securities on the lists would have been appropriate if they had been selected by Mr. Anderson at that time? Maybe I can rephrase that.

Would it have been appropriate for Mr. Anderson to have selected any of the securities on either of the

lists, the "A" Approved list or the Approved List?

A Our service seems to be twisted around in that question of yours. Ours is to recommend securities off the list and I was trying to point out to Mr. Anderson that if he had other securites that he was advised were good purchases by some of his other sources of information, that I wanted him to restrict them to ones that were on our approved list that we had done our research on and had been through our securities selection committee.

Q Did you at the time of your letter, March 10, 1970, or at any time thereafter recommend to Mr. Anderson what to be done with the proceeds of the sales which were recommended in that letter?

A The question is hypothetical because only to the extent that they were carried out would they have been proceeds, and our posture until after lows in May of that year was a very conservative posture toward the market. So it would have been a question of retaining the proceeds, or putting them into shorts, or applying them against bank debts or any other kind of indebtedness that may or may not have existed at that juncture.

Q In March of 1970 did you consider which of those alternatives was appropriate for the Anderson Company account?

A I am sure that this was a matter that was given -- if you talk about me personally --

Q I meant to refer to your whole firm.

A I am sure this was given consideration.

Q At the time that you wrote the March 10 letter, did you know what consideration had been given to it?

A It had not been carried out. Understand well, from our standpoint we didn't have any idea whether Mr. Anderson was going to act on these suggestions or not.

Q Was that the reason no recommendation was made with respect to the use of the proceeds of the sales that were recommended?

A It seemed rather futile to make recommendations about proceeds until we knew whether there were any proceeds.

Q Is that the reason why in the best of your recollection no recommendations were made?

A I was not running the account. I was the back-up man. . I think you should direct that question to the person running the account. I can't answer it because I don't know what went through his mind at that time. I am just telling you from the overall viewpoint.

Q I am just trying to get the record clear as to what the reason was in your mind at the time you wrote the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, N.Y., N.Y. 10007

March 10, 1970 letter for not making any recommendation with respect to use of the proceeds.

THE COURT: I think that has been adequately covered. He has told you a couple of times he made certain recommendations for sale. You have not yet established whether Mr. Anderson advised that the recommendations had been accepted and that there was money on hand to be invested and, further, the further answer answer of the witness is that he was not running the account at that point in that connection.

Let's move on.

MR. DEVINE: May I ask one further on this subject, your Honor?

Q I would just like to know, Mr. Chase, if prior to March 1970 it had been the practice of Chase, Incorporated to wait until sales had been made before making purchase or usage recommendations?

A In the early stages of the account I think it is quite clear in the record that he had what you call matching purchase and sale recommendations. The longer the relationship went on the less point there seemed to be in making those matching recommendations because we didn't know what was going to be done, what money was going to be available or whether in fact it was free cash

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

or whether it was borrowed money.

Q I show you Plaintiff's Exhibit 49 and 50, and ask if these are copies of the "A" Approved and the Approved Lists which were in effect at Chase, Incorporated between October of 1966 and January of 1970.

A Without examining each page, I assume they are chronologically all there. Is there a difference between these?

A One is the Approved List and one is the "A" Approved List.

MR. DEVINE: It may be counsel would concede this is a complete collection?

MR. DIAZ-CRUZ: Conceded, yes.

Q After December of 196, when next, to the best of your recollection, did either of the Anderson accounts engage in a short sale transaction?

THE COURT: After 1967?

MR. DEVINE: After December of 1967.

THE COURT: Isn't that already in evidence?

MR. DEVINE: I think it is, your Honor. Maybe I can shortcut this a little bit.

Q Mr. Chase, could you recall an occasion in April -- let's say March, April, May, in that time frame, in the year 1970 in which short sales were caused to be

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

made in the Anderson Company account?

A What do you mean, caused to be made?

Q Well, that occurred.

A Yes.

Q Do you recall when that first came to your attention?

A I think Mr. Inches brought that to my attention. I think it was in May.

Q Do you recall what was said when he brought it to your attention?

A I got on the phone to speak to Mr. Anderson.

Q Did you call him?

A Yes. I said this was again a violation of our basic understanding and I wanted it covered. He told me most of them were against the box, and I said "In any event, either sell them, but I don't want short selling to be a practice in these accounts."

Q You said to either sell them or what?

A Or cover them.

Q Did you tell him which to do?

A No, I didn't tell him which to do. He was running the account. He got them in the short position and I objected to the short position and told him I wanted it corrected, and he did.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y.

Q At that time did you tell him to cover them? Were those the words you used?

A I don't recall whether I said "Cover," but I said I wanted the short position removed.

Q In your view, what is the difference between a short sale against the box and an outright sale of a security?

A Well, I thought we established this long ago, that when you are long of a security and you sell it, you immediately establish a gain or a loss as of that date, and you have available to you the cash proceeds in toto. When you make a short sale against the box, you cannot use that money in toto to do something else with it.

Q Does the short sale against the box have the effect of suspending recognition of the gain?

A That is a tax question.

THE COURT: Recognition of what gain?

MR. DEVINE: Gain or loss, I am sorry, your Honor.

Q -- gain or loss, as would be otherwise recognized if the sale was an outright sale?

A It could defer, yes.

Q In practical effect, other than this possible deferral of recognition of gain or loss, are short sales

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007 (212) 791-1020

against the box and outright sales essentially the same?

A No. In one case all the proceeds are available and in the other case they are not.

Q What event is required in the case of a short sale against the box to make the proceeds available.

A It depends whether you have a margin account or whether you have cash sufficient to cover.

Q Let's take the example of a short account. In the case of a short account where a short sale against the box is created, what event is required in order to free the proceeds?

A Well, brokers require proper margining --

THE COURT: No, no. What frees the proceeds on a short sale?

A There are no proceeds to free. You cover it and you are where you started.

THE COURT: That is what frees the proceeds, when you cover. You either deliver -- he who sells what isn't his must put it back, or else, and there is another phrase that goes with it.

Q After the episode which you have just testified about, I think you said in May 1970, did there come another occasion when short sales occurred in the Anderson account?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007

A Yes.

Q When next did that occur?

A I believe it was June and July.

Q How did that come to your knowledge?

A It came through on brokerage statements, as I recall.

Q Did you see these brokerage statements when they came in?

A They were called to my attention by Mr. Inches.

Q What did you do, if anything, after having this called to your attention?

A I wanted to make sure that he had received our Trade Winds of July 6, which clearly set forth our position. I told Mr. Inches that I wanted him to get in touch with Mr. Anderson immediately and speak to him about his violation of our understanding on how the account was going to be run, and he did this not once but at least twice, and then because I was so concerned about this, when Mr. Inches spoke to me about Mr. Anderson's co-trustee, Mr. Whipple, he asked me if it would be all right for him to speak to Mr. Whipple to see if we couldn't reach Doug Anderson through his co-trustee, who was a friend of the family, and I told him I had that measure of concern that I gave him authority to get in touch with Mr. Whipple,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE, FOLEY SQUARE, NEW YORK, N.Y.

which I believe he did twice, urging Mr. Whipple to bring whatever influence to bear that he could on Mr. Anderson to cease and desist in these short term operations.

Q You referred to the July Trade Winds. Did you cause that to be sent to Mr. Anderson?

A That was regulation, that it went to everybody.

Q What was the posture that was reflected in that issue of the Trade Winds, as you understood it?

A It was a very positive posture. The title of it, as I recall, was "The Cold Front is Passing." -- in the vernacular, the bear market was passing.

Q Did that mean to you at that time that it was appropriate to invest in equity securities?

A We were investing in equity securities in the firm.

Q Do you know how much cash was available for investment in the Anderson Company account at that time?

A I can't tell you how much there was because this is one of the problems we had continually trying to establish in the middle of all those short sales what was the position, but for us to have done more than point out our investment attitude toward the market, when the client who had complete control over these accounts was going short, I think it takes -- the first thing I wanted to do

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE
FOLEY SQUARE, N.Y.

was to stop him going short and I think we went to extreme measures, perhaps beyond what I should have done, in contacting a co-trustee to try to change his attitude.

Q I want to focus on the difficulty you say you had in determing the amount of cash that was available for investment.

Specifically, did Mr. Anderson ever refuse to give you any information on that subject?

A He didn't keep us current on it except through brokers' statements, which sometimes were a week or more in arrears, and when you look at the record of the volume of short selling that was going on, unless he told us every time he made a short sale we wouldn't have caught up to it until the brokers' statements came through.

Q Do you know how much cash was shown by the Chase, Incorporated records themselves to be available for investment in late 1970 in the Anderson Company account aside from the short account?

A No, I can't tell you that figure.

Q Could it have been --

THE COURT: What do you mean aside, you mean ignoring the losses in the short account?

MR. DEVINE: Yes. Ignoring the cash available that would have been available had the short positions

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

been delivered.

THE COURT: Had there ever been a report of what the effect of the short sales had been on the availability to buy stock? These short sales took a tremendous drain of the capital of the Anderson Company, $150,000 in one year.

MR. DEVINE: The brokerage statements are marked to the market every month.

THE COURT: Did you ever try to figure out how much you lost by looking at a monthly brokerage statement?

MR. DEVINE: I hope my own ignorance won't be the standard in this case, your Honor.

THE COURT: A profit and loss statement is one thing; a broker's statement indicating that you have been trading on the short side will consume the cash but that doesn't tell you what there is available.

BY MR. DEVINE:

Q Let me see if I can do this another way. I am going to show you in the so-called black book a page entitled "Cash Balance, the Anderson Company, No. 6," and it refers to 1970. I ask that you look under the heading "Balance" on the date of the October 1970 appraisal, and tell me how much cash the records of Chase, Incorporated show to have been available at that time.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY

A You want the last date on the page?

Q No, as of the October 6, 1970 appraisal.

A $165,000.

Q Was that in any way involved in a short account?

A To the extent that there were shorts, to cover the shorts it would have required we didn't know how much money. You had to buy back the shorts. Therefore, although we kept it, and the only reason we kept it, is because we didn't recognize the short sales, because we had no responsibility for it, but we were not going to spend a balance that was created by selling short to buy other securities when you had shorts outstanding. We might have wound up with a double debit balance on our hands.

Q Well, do you know that to have been so? Did you check the September 1970 brokerage account statement to see how much would have been required to cover short positions?

A I did not personally.

THE COURT: You know how that is done, don't you, Mr. Devine?

MR. DEVINE: I believe so, your Honor.

THE COURT: Tell me what your understanding is when you look at a brokerage statement, how do you decide

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE

how much you need to cover?

MR. DEVINE: It would depend if you are closing or covering.

THE COURT: Well, your phrase was "Did you look at the brokerage statement to see how much it would cost to cover?" I would like to know what you think. It may be that you will now express what is at the bottom of a possible misunderstanding of this feature of the case.

MR. DEVINE: My understanding is that to do that you would take all the securities which were short and the numbers of shares that were short, you would check the current market price of those securities and you would make a multiplication and an extension and you could then purchase all of those positions, positions long for the amount of cash that that total said, and that would then make it possible to deliver against the short positions, and to release your long position in the stocks that you were short.

THE COURT: That is the correct way to find out how much you are out on the short side?

MR. DEVINE: Yes. That was the import of my question, whether that had been done at that time to see

THE COURT: But they were disclaiming any responsibility for supervising short sales, and if the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

client was just going along in oblivion, that was the client's frolic and detour.

BY MR. DEVINE:

Q I show you Plaintiff's Exhibit 37 and ask if that is a letter which you wrote to Mr. Anderson.

A Yes.

Q In that letter you state that you strongly recommend that Mr. Anderson cover short positions?

A That's correct.

Q By use of the phrase "cover short positions" did you mean to distinguish "covering" from "closing"?

A Do you want to make the distinction as to what you mean by the difference between covering and closing?

Q Let me turn it around and ask you: In November of 1970 in your view was there a difference between covering and closing?

A I don't know what you mean. I just don't understand your terminology. Covering ends. Closing and covering could be synonymous, but if you have a distinction in your mind, I would like to know what the distinction is so I can answer the question. To me, they are synonymous.

Q What is it that you expected Mr. Anderson would do after receipt of your letter if he had done what your

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, N.Y. 10007 (212) 732-8698

letter suggested he do?

A Get rid of the short position.

Q And in your view, how would that have been done?

A It depends whether it was against the box or whether it was, as the vernacular goes, a naked short sale. If it was a naked short sale, he should have bought it in.

Q If it is a naked short sale, you don't have any alternative?

A No.

Q With respect to the short sale against the box, what is it you expected Mr. Anderson to do, if he followed your letter?

A He had a choice whether he bought it in or whether he delivered the stock that he had in the box.

Q Did you mean by your letter to suggest which of the two alternatives was appropriate for him at that time?

A No.

Q When I say "him", I mean for the Anderson Company account.

A No. He got the account in that shape and I was telling him to get it out. He didn't ask me how to get there and I didn't see why I should tell him which was the better way for him to extract himself from that situation.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Q Did you consider at that time the effects of various alternative methods of getting out of that situation?

A I don't think there were any, except a deferment. If he were doing it for tax reasons, why, that would be his judgment, whether he did it one way or another. You must remember, we didn't even know what the tax position was of the Anderson Company, and we didn't want to make that our business. We were not running the Anderson Company, we were only running the Anderson Company securities account.

Q Why was it that you didn't know the tax position of the Anderson Company?

A That was not our responsibility, to know that. Under the basic agreement, the client is supposed to keep us advised of all pertinent matters relating to the securities that he turns over to us, and any changes that take place in the client's position, we look to the client to let us know.

Q If Mr. Anderson had followed your advice in this letter of November 20, 1970, by closing the short position, and by closing I mean by causing to be delivered against the short position the securities which were held long previously, what would the effect of that have been from

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

a tax standpoint? Did you know at the time you wrote that letter?

A No. In that case he had until next April, and so the tax situation wouldn't have been altered, whichever way he did it.

Q If he had chosen, after receiving your letter, to cover the short position against the box by buying the equivalent amount of the same security and delivering the newly purchased securities against the short position, what would the effect of that have been on the posture of the Anderson Company account?

A Well, it depends what the cost price was of the original security --

THE COURT: That is not what he means. He means would the account then be long of the securities in the box. That is what he is getting at.

THE WITNESS: Yes.

Q It would be equivalent to repurchasing the very securities that were then held in the amounts that they were then held, is that correct?

A Yes.

Q And it would be --

A Just one second. It would be the same securities, a hundred shares of General Motors, but it wouldn't be the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

same certificate nor the same tax cost. This is the point I was trying to make.

Q But it would be equivalent to at that time investing in those very securities that you previously held long?

A Yes.

Q And in your view in November of 1970, were the securities which Mr. Anderson had caused the Anderson Company to sell short against the box the best available investment vehicles for the Company to purchase at that time?

A There are really two parts to that question. You may not have intended it. If you are going to buy something else and you are in a short position, first of all, you have to get rid of the short position. First I wanted to get rid of the short position and if there were funds then available, a new judgment would have been made as to what was the most attractive security to put those proceeds into.

THE COURT: Mr. Chase, I think what Mr. Devine is getting at is this, and you correct me if I am wrong, because I want to follow it, Mr. Devine: He says that if after the receipt of this letter the customer, the client, the manager of the Anderson Company account,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

decided to buy in the shorts that would have left him long of the things that he had in the box.

THE WITNESS: Right.

THE COURT: And he is asking you whether it was the judgment of Chase that the things that he had long in the box were the kind of securities that Chase was recommending for purchase at the time, because if the effect of advising him to get out of a short box was the same as buying a long position in the particular securities, he wants to know whether that represented your best judgment as to what he ought to be holding. Do you follow the question? Is that your question?

MR. DEVINE: Yes, exactly, your Honor.

THE WITNESS: I follow your question.

THE COURT: Don't tell me he got himself into it and he had to get himself out of it. We are into the question of the investment quality of what he had on hand, some of which you apparently recommended and some of which he had gotten by tips from somewhere else.

THE WITNESS: To the extent we were continuing to hold them in the account, before we knew anything about the short selling, it might have been our judgment, management, that those were proper securities to hold in the account.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

THE COURT: Now he wants to know with relation to the securities that were long at that time, and here is a list of the short position on October 6, and if you go down that list -- this list is attached to Exhibit 38, dated January 22, 1971 -- if you go down that list, what of that list represents things that you would recommend he hold or buy, and what of that list would you recommend that he clear out by delivering the box against the sale, so that we have the specifics of it.

THE WITNESS: Well, your Honor, there is one thing that is lacking here. This doesn't indicate that those short positions were all short against the box.

THE COURT: Somebody put notations on there about the box. I don't know who did that.

THE WITNESS: There are some that have boxes on them. All right.

MR. DEVINE: I know that handwriting. That is Mr. Anderson's handwriting. I don't know if that purports to be complete. I would prefer we not offer it to the witness for that.

THE WITNESS: May I zero then on just the ones against the box?

THE COURT: All right.

THE WITNESS: Because that is two different

SOUTHERN DIST. CT COURT REPORTERS U.S. COURTHO

questions.

Might I have the black book with the appraisal as of that date?

MR. DEVINE: Absolutely (handing).

MR. DIAZ-CRUZ: What notations are you referring to, if we may, your Hinor --

MR. DEVINE: There are margin notations on the short positions.

THE WITNESS: Naked shorts against the box.

MR. DEVINE: I would say we should not refer to the pencil notations because we don't know their correctness.

MR. DIAZ-CRUZ: Your Honor, if I may suggest a way, we do have the Eastman Dillon statement of the securities which were bought short and long, and rather than use notes --

THE COURT: Were the longs on the statements or were they on the backs?

MR. DIAZ-CRUZ: The long position, your Honor, as well as the short position, as I understand it, are both indicated.

THE COURT: It will take too long to start fussing around about that. I thought we were getting to the bottom of Mr. Devine's question. Let's not confuse

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

it with that.

MR. DEVINE: Maybe I can do this another way, your HOnor. It will be brief and maybe it will work.

THE COURT: All right.

BY MR. DEVINE:

Q My notations indicate that there were ten securities at that time which were short against the box --

THE COURT: What are their names?

MR. DEVINE: Anaconda, Canadian Superior, Pargas, Scope, Syntex, Walco, Consolidated Oil and Gas, Foxboro, Austral, and British Petroleum. I might take a minute and make sure --

THE COURT: The question is, taking those securities, which ones of those were on your appraisal list as securities that you were following and would recommend maintaining in the account in October of 1970?

THE WITNESS: I think all of them are here.

THE COURT: All right. That answers the question.

Q Do you know what the rating was of any of those ten securities in November of 1970 on the Chase, Incorporated lists?

A From memory? No.

Q Well, I suggest to you, and I ask if this refreshes your recollection, that only one security on

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

that list of ten was rated 2 or better. Does that refresh your recollection?

A No.

Q I suggest to you --

THE COURT: I suppose 2 is better than 3 --

MR. DEVINE: There was one security that was rated, your Honor.

THE COURT: What was the name of that?

MR. DEVINE: Canadian Superior.

THE COURT: What were the others rated?

MR. DEVINE: Anaconda was rated 5. Austral was not on either list. British Petroleum was not on either list. Consolidated Oil and Gas was not on either list. Foxboro was not on either list. Walco was not on either list. Syntex was rated 3. Scope had been removed from the list in July of 1970, and Pargas had been removed from the list on the very date that letter was written, November 11, 1970.

THE WITNESS: Is there a question I am supposed to be addressing myself to?

THE COURT: The question then comes up, would you in the judgment of Chase -- was it appropriate to recommend these securities that were not on the "A"-1 Lists at that time?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

THE WITNESS: Well, I wasn't managing the account, but if we are talking from a managerial approach to this, I doubt that we would have been buying anything that wasn't rated 1, 2 or 3. Some of these that you say were not on the list stemmed from discussions between Mr. Inches and Mr. Anderson. Mr. Inches had been the oil analyst for us, and I can see that there are a number of the securities here that he followed, but that doesn't mean because they are not on the approved list that they are not good securities.

THE COURT: I would like to ask one further question: Taking these securities that were not on the approved list, were any of those securities recommended by Chase when they were initially purchased? For example, British Petroleum, did you recommend the purchase of that at any time?

THE WITNESS: I would be very much surprised if Mr. Inches recommended the purchase of any security not on our approved list. This is against the rules and regulations. On the other hand, there may have been discussions that were had --

THE COURT: I am not talking about where Mr. Anderson came with his own -- where he initiated the suggestions and then tried to find out whether there was

SOUTHERN DIST CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, N.Y.

any objection to it, in effect. I am talking about the rendition of your counseling services where you initiated suggestions. It is one thing when the customer initiates a suggestion and wants to know whether you have any objection; it is another thing to make an affirmative recommendation and I would like to find out in respect to Walco, Consolidated Oil, Foxboro, Austral and BP, whether any of those were recommended initially by Chase and, if so, why. Is there some way to check that out?

THE WITNESS: I would have to ask Mr. Inches, because I don't know, sir. I would be very surprised --

THE COURT: We will ask Mr. Inches, if he takes the stand. I will mark down here "Ask Inches."

MR. DEVINE: Your Honor, may I take Plaintiff's Exhibits 35, 3[illegible] and 38. The first two are November of 1970 and the third is January of 1971.

(Pause)

MR. DIAZ-CRUZ: Your Honor, may we establish exactly what the securities are that Mr. Inches will be asked about?

THE COURT: Walco, Consolidated Oil -- I assume you are following the case -- Foxboro, Austral and BP, British Petroleum.

I don't know about the others, whether Scope and

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. [illegible]

that other one, the Par, whether Mr. Devine made any point about that except to say that they had been removed from your list. So why don't you just add those to find out whether those ever were recommendations initiated by Chase.

THE WITNESS: I can tell you one: Scope was.

THE COURT: What is the full title of that PAR?

MR. DEVINE: It is Pargas, p-a-r-g-a-s. I may be pronouncing it wrong.

BY MR. DEVINE:

Q I show you Plaintiff's Exhibit 35 and ask simply if you reviewed that letter before it was mailed to Mr Anderson?

A No.

Q I show you Plaintiff's Exhibit 36, which is a letter from Mr. Anderson to Mr. Inches, and my question is whether you saw that letter on its date, November 11, or shortly thereafter?

A What is the question?

Q Did you see this letter on November 11 or shortly thereafter?

A No, I don't recall ever having seen it.

Q I show you Plaintiff's Exhibit 38, and I note here once again there are pencil notations on this letter

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, N.Y. CO 7-4580

you then viewed to be sub-quality.

A I don't believe I can answer that at this juncture. I would have to re-study it.

MR. DEVINE: Could I have this document, which is a Chase Fund of Boston seminar report, dated April 30, 1967, marked as Plaintiff's Exhibit 66 for identification.

(Plaintiff's Exhibit 66 was marked for identification.)

MR. DIAZ-CRUZ: Mr. Devine, what is the relevance of Exhibit 66?

THE COURT: Let's go ahead, gentlemen.

Q Mr. Chase, I show you Plaintiff's Exhibit 66 for identification, and ask whether you can tell from this document whether in the three months ended April 30, 1967 the Chase Fund of Boston sold 5,000 shares of Ampex Corporation?

MR. DIAZ-CRUZ: Objection, your Honor.

THE COURT: Overruled.

A Yes, it states that 5,000 shares were sold.

Q Do you recall whether in February of 1967 the account of Mrs. Anderson also sold Ampex Corporation securities at the recommendation of Chase, Incorporated?

A No, I don't, but to keep the record straight, I think it should be stated although 5,000 shares of Ampex

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, N.Y., N.Y. 10007

were sold, 30,000 shares were retained, and there can be reasons for selling a part of a commitment.

Q I show you the portion of the black book relating to Mrs. Anderson's account and ask whether you can tell from any document contained in that portion of the black book whether or not Chase, Incorporated recommended to Mrs. Anderson's account that she sell Ampex in February of 1967?

A It shows here that 150 shares were sold -- or recommended for sale on February 17.

MR. DEVINE: Your Honor, I offer Plaintiff's Exhibit 66 at this time.

THE COURT: For what purpose?

MR. DEVINE: As a foundation to the questions previously asked to which there was objection with respect to --

THE COURT: Well, what is the point? You have the Fund selling 1/7th of its holdings and you have Mrs. Anderson selling 150 shares of her holdings of the stock, what is the significance of that information?

MR. DEVINE: I am trying to offer a foundation in determining whether or not Chase, Incorporated had a policy with respect to procedures for transactions, the order of transactions or disclosing the order of

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

transactions where mutual funds and other accounts were selling or buying the same security in the same period of time.

THE COURT: Then we would be trying several lawsuits at the same time. We are not going to go into the question which motivates the sale of a piece of a holding of one entity with the considerations that go into the sale of some of the stock of a client under counsel.

It is an entirely different thing, and I am sure you must have in mind those cases, Mr. Devine, where an advisor sells something to a customer or buys something for a customer and takes an opposite position for its own account, or for the customer's account, and then/when there are a multiplicity of customers each having its own -- its or his or their own objectives and tailoring the advice to those objectives, for every seller there is a buyer and for every seller who believes that there is a business purpose in the sale, there is a buyer who has a valid business purpose for the purchase. You can't say just because somebody buys that somebody shouldn't sell at the same time, because you have to take into consideration all of the relative facts and circumstances of each person's situation, or each entity's situation.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

The only thing that the law interdicts is duplicity. You can't, at the one time, be a seller of your own goods and advise the purchase of those goods without a valid business reason, but beyond that, the fact that two people sold some securities in the same time frame is of no relevance to this case at all.

MR. DEVINE: Your Honor, I have no further questions of this witness.

THE COURT: Any cross examination?

MR. DIAZ-CRUZ: Very brief, your Honor.

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CROSS EXAMINATION

BY MR. DIAZ-CRUZ:

Q Mr. Chase, you testified this morning, I believe, as to certain publications called the Trade Winds. I show you Defendant's Exhibit 44 for identification, and I ask you what are those documents?

A I don't believe this covers all of them, but most of them -- I think there are some subsequent to this date (indicating).

Q Are these all the Trade Winds, Mr. Chase, between October of 1966 and February of 1971, to the best of your recollection?

A Yes.

SOUTHERN DIST. CT COURT REPORTERS, U.S. COURTHOUSE FOLEY

MR. DIAZ-CRUZ: Your Honor, we offer the Trade Winds in evidence.

(Defendant's Exhibit 44 for identification received in evidence.)

Q Mr. Chase, what are the Wheezes?

A I tried to explain earlier to his Honor what the Wheezes are. They are relatively short statements, of a page to two pages, that are written for the use and guidance of the account managers by management, setting forth the evaluation of the firm, of the economic and stock market outlook, over a short period of time. These Wheezes keep being revised as conditions appear to warrant.

Q Who prepares the Wheezes, Mr. Chase?

A You are asking me who did it during the period -- different people over the years have done it during that particular time, Mr. Duncan was the chief architect, I believe, although I don't believe any of them went out without my reading them.

Q I show you Defendant's Exhibit 45 for identification and ask you whether you recognize those documents.

A Yes. Those were often included in the letters of account managers to their clients as a kind of a summary statement, for the benefit of the clients.

MR. DIAZ-CRUZ: Your Honor, I offer Defendant's

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Exhibit 45 into evidence.

(Defendant's Exhibit 45 for identification was received in evidence.)

Q I show you two documents marked as Defendant's Exhibit 53, and ask you, sir, whether you can identify those documents.

A Yes, I recognize them. This is a memo to the organization -- one is dated 4/28/70 and the other one is dated 11/4/70, giving the economic outlook and a brief summary of the different segments of the economy and, in our normal fashion, a table with such data as gross national product, FPP, export profits, tax rate, consumer profits, unemployment, Dow Jones earnings, with projections into the year ahead.

Q Who received those documents, those memoranda to organizations on the economic outlook?

A This is for the internal benefit of the organization. The account managers are, it is in their best judgment as to how they use it. These are not the same type of thing as are the "A" List and the Approved List. Those were not supposed to be used outside the organization. There was no prohibition on this.

MR. DIAZ-CRUZ: Your Honor, I offer Defendant's Exhibit 53 in evidence.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY

(Defendant's Exhibit 53 for identification was received in evidence.)

THE COURT: What I would like to know about these three exhibits, Mr. Chase, is whether the counsel and advice that was furnished to the Anderson accounts was consistent or different from the viewpoints expressed in Exhibits 44, 45 and 53, namely, Trade Winds, Wheezes and these economic outlooks issued to the organization?

A THE WITNESS: I believe they were consistent, sir.

Q Mr. Chase, turning to Plaintiff's Exhibit 37, your letter of November 20, 1970, and in connection therewith, did you think at that time, Mr. Chase, that urging Mr. Anderson to eliminate the short positions in the accounts as of November 20, 1970, he had a higher priority than trying to help him rearrange his portfolio of long securities?

MR. DEVINE: Please note my objection to the leading question.

THE COURT: Sustained.

Q Mr. Chase, do you recognize the position of the Anderson Company as consisting entirely of short positions against the box or also consisting of so-called naked short sales as of November 20, 1970?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY

A I recognize it consisted of both.

Q What was your intent, Mr. Chase, in sending to Mr. Anderson your letter of November 20, 1970 insofar as they related to the so-called naked short positions in the Anderson account?

A Answering that, I just want to point out that Mr. Inches was managing the account, but when we have real problem children in any of our accounts, I very often get brought into it. That is why, as I testified earlier, I spoke to Mr. Anderson in May 1970 and then made sure that Mr. Anderson was acquainted with our Trade Wind of July 6, 1970 and spoke to him on the phone, and Mr. Inches advised me he didn't seem to be getting anywhere in straightening out this situation, and I wrote him an additional letter, feeling that perhaps if it came from the head of the firm that it would carry more weight than what might have been forthcoming from the account manager.

Q Mr. Chase, what did you intend Mr. Anderson to do if he followed your advice as to the naked short sales, or short positions existing in the Anderson Company account as of November 20, 1970?

A I expected him to cover them. I think I should say I hoped he would cover them, because I had given up

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

expecting.

Q As to the positions identified in Plaintiff's Exhibit 38, Mr. Chase, that were short against the box, what was your intent as to those, sir?

A This was meant to cover all short sales.

Q By "This" you mean your statement as of November 20, the letter of November 20, 1970?

A That's right. If you will notice, I gave the reason for it that I thought the market was going to go up and I thought he should be out of all short positions, whether they be naked or against the box.

MR. DIAZ-CRUZ: No further questions, your Honor.

MR. DEVINE: May I have one or two quick questions on redirect, your Honor.

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REDIRECT EXAMINATION

BY MR. DEVINE:

Q With respect to the Trade Winds report for July 6, 1970, do you know whether Mr. Inches had that document at the time that he wrote the cover letter on the June appraisals, and the date of that cover letter, I believe, was July 7 of 1970?

A I don't know.

Q You don't know?

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A No.

Q Would the Trade Winds normally come out on th date that it bears?

A Pretty close to it, but it is usually written prior to that time and we try to date it about the time it comes off the press.

Q I show you Defendant's Exhibit 53, and ask if you would go through the economic -- excuse me, through the memo to organizations-- memos to organizations, there are two here -- my question is, do you know whether either of those or both was delivered to Mr. Anderson?

A I do not.

Q Did you ever see a copy of the November 4, 1970 memo to organizations which bears the handwriting of Mr. Inches in the upper righthand corner?

A No -- I beg your pardon, I saw it at the time of the deposition.

Q You did not see it at the time that it was sent, is that correct?

A No.

Q You testified that the advice which was given for the Anderson accounts was, and I don't recall your precise words, but I think you said consistent with the statements made in the Trade Winds, the Wherren and the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, N.Y., N.Y. 10007

memoranda to organizations, is that correct?

A Yes. I think as far as the Trade Winds are concerned, however, it should be born in mind that those deal with long-term trend factors and it is pretty difficult to say whether at a given point in management it was consistent with what was projected three years ahead. As far as consistent with Wheezes and the economic policy, I think it would be fully consistent.

Q The recommendations that were made by Chase, Incorporated to the Anderson accounts in the years 1969 and 1970 were, for the most part, oral, is that true?

Aq I believe that to be the case -- yes, oral, face to face, or over the telephone.

Q Is there any written record of any kind now in the possession of Chase, Incorporated which to your knowledge discloses precisely what, if any, recommendations were made to the Anderson accounts in 1969 and 1970, by date, security and number of shares?

A I don't know of it.

Q You don't know of any such record?

A No, I don't know of it.

Q When you say that the advice given to the Anderson accounts was consistent with these three items, are you saying that to the best of your knowledge --

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK, N.Y.

Q Which three items?

A The Trade Winds, Wheezes and memoranda to organizations --

A Yes.

Q Are you saying it was consistent, to the best of your knowledge?

A Yes.

Q I take it that you were not party to conversations between Mr. Spindler and Mr. Anderson on the telephone, or Mr. Inches and Mr. Anderson on the telephone, is that correct?

A That's right.

MR. DEVINE: No further questions, your Honor.

THE COURT: Thank you. You may step down.

Next witness.

MR. DEVINE: The Plaintiff calls Richard Spindler.

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SOUTHERN DIST CT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, N.Y., N.Y.

RICHARD ALLEN SPINDLER, called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVINE:

Q What is your present employment Mr. Spindler?

A I am Vice Chairman of the Board of John P. Chase, Incorporated.

Q When did you join Chase, Incorporated?

A In 1967.

Q When first did you have any association with the Anderson accounts?

A Shortly after joining the company.

Q Can you be more precise? Can you recall a month?

A I would say it was either April or May of 1967.

Q Did there come a time when you assumed primary responsibility for counseling the Anderson accounts?

A There did.

Q When was that?

A Right after I met Mr. Anderson.

Q When did you meet Mr. Anderson for the first time?

A Again, in April or May of 1967.

Q At any time between April or May of 1967 and the present, did you ask Mr. Anderson for copies of the 1961,

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE
FOLEY

1967, 1968, 1969, 1970 or 1971 tax returns for either the Anderson Company or Mrs. Anderson?

A I did not.

Q Was there ever a time after April or May of 1967 when you requested of Mr. Anderson information pertaining to the financial status and background of the owners of the Anderson accounts which he refused to give or was unable to give?

A Any information?

Q Yes.

A Not an outright refusal, but the confirmations from trades executed in the company account and Mrs. Anderson's account were spasmodic, and on numerous requests there was a considerable delay before we received them. As to asking Mr. Anderson specific data on the wellbeing of his mother or the beneficiaries of the trust or the stockholders of the company, no.

Q Was it your understanding that the Anderson Company was a corporation?

A That's correct.

Q Did you ever inquire of Mr. Anderson whether the Anderson Company was a corporation or a partnership?

A I cannot recall.

Q Did you ever inquire of Mr. Anderson who the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

shareholders of the Anderson Company were?

A I believe Mr. Anderson gave us that information.

Q Did he give you that information in writing?

A I believe he might have.

Q Can you recall the description of the document by date or in any way identify it that we might be able to produce it for you to look at this afternoon?

A If we have it, I would think it would be on one of the Anderson Company letterheads.

Q That is all you recall? You don't remember the date of it?

A No, I do not.

Q Have you seen that document lately?

A No, I have not.

Q In counseling the Anderson accounts, was it your practice to prepare programs, and by that I mean matched sets of purchase and sale recommendations?

A In the beginning, yes.

Q When did that change?

A It changed in the fall of 1967.

Q What brought about the change?

A When it became apparent my recommendations were not being adhered to, or every recommendation was second-guessed or questioned.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQ. NEW YORK, N.Y. CO 7-4580

Q Did you feel in the fall of 1967 that it was inappropriate for the client in a counsel situation to inquire of you about recommendations?

A Not at all.

Q Did you feel it was appropriate for the client to call and suggest that there might be another security of the same issuer that might be more appropriate?

A No.

Q You felt that would be appropriate for the client to do that, is that right?

A That's correct.

Q Did you feel it might be appropriate for the client to call and say with respect to a particular recommendation, "Would you tell me more about it?" or "From what I know, this doesn't appear to be appropriate." Would you accept that kind of call as proper?

A Yes, sir.

Q What was it in the fall of 1967 which Mr. Anderson was doing above and beyond this type of thing which caused you to cease the practice of making matched recommendations?

A After going through the type of questioning you are talking about, the inability on my part, from a lack of communications, to determine just what the client had

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

done.

Q Was Chase, Incorporated receiving duplicate monthly statements and confirmations at that time frequently from the brokerage houses involved?

A To my knowledge, no.

Q They were being sent by the brokerage house to Mr. Anderson and he was forwarding them to Chase, Incorporated? Was that your understanding?

A That is correct.

Q Did you ever suggest to Mr. Anderson that that practice be changed and that the statements be sent direct from the brokerage house?

A Constantly.

Q And he refused to do that?

A No, he didn't refuse. He just did it when he got around to it.

Q Did what?

A Sent us copies.

Q No, I am sorry. Did you at any time ask Mr. Anderson to please contact the brokerage houses and have them send duplicate statements direct to Chase, Incorporated?

A Yes.

Q You did?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
NEW YORK, N.Y.

A Yes.

Q Did he refuse to go to the brokerage houses and make that arrangement?

A I do not know.

Q Did there come a time when the duplicate statements began to come directly from the brokerage houses?

A Yes.

Q When was that?

A In his mother's account, I believe in the spring of 1968. In the company account, that did not occur, to the best of my knowledge, until the account was reinstated.

Q After that change was made and the statements began to come directly from the brokerage house involved, did you go back to a practice of matching purchase and sales -- purchase and sale recommendations into a program?

A To the best of my knowledge, I believe when we started again, I did.

Q You started again in July of 1968, is that correct?

A On the company account.

Q And you had been advising Mrs. Anderson's account throughout?

A Yes, and the trust.

Q Between July of 1968 and October of 1968, did

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. [illegible]

you prepare a program of purchases and sales, recommend purchases and sales, for the Anderson Company account?

A I can not recall.

Q Would the black book refresh your recollection in that respect?

A It could.

Q I give you Plaintiff's Exhibit 45 and ask that you take whatever time you need (handing).

(Pause)

A In the company account, from July until?

Q October.

A Judging by the names, I would say if a formal program was not presented to Mr. Anderson, at least a formal program was presented over the phore.

Q What leads you to that conclusion, what is it that you are looking at?

A I am looking at the cash sheet and I am going back to the date starting July 23 for the Anderson Company account, and I recognize several names that were names that, to my knowledge, were used primarily by Chase.

Q Can you tell from the document you are looking at or any other document which we can show you precisely which securities between July of 1968 and October of 1968 were purchase recommandations by Chase, Inc., and which

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

ones were sale recommendations by Chase, Incorporated?

A Well, the first one that meets my eye is one that was a company we were active in in this type of account, Susquehanna Corporation, a sale on the 17th of December --

Q Let's take them one at a time. With respect to that September sale of Susquehanna, are you saying it is your recollection now that this was something you recommended specifically to the Anderson Company at that time?

A No, I am not saying that. I said judging by the names, I would assume this was our recommendation.

Q You would assume Susquehanna Corporation was your recommendation?

A In December of 1968, yes, sir.

Q You say you assume that. Is there no record from which you can determine precisely and develop that it was or was not the Chase, Inc. recommendation?

A Not that I see here.

Q Do you know of any other record that would give you that information?

A No, sir.

Q I am sorry. I interrupted you.

A Are we finished with that one?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Yes.

A The other one would be Phelps Dodge, which was a company we followed during that period.

Q What was the date?

A There seems to be a purchase of a hundred shares on the 6th of August, the purchase of a hundred shares on the 13th of August --

Q Let's take those two purchases. Can you tell from this record or does that record refresh your recollection as to whether or not those were specific recommendations by Chase, Incorporated to the Anderson Company account?

A It doesn't.

Q You can't be certain?

A No, I cannot.

The third is another purchase of Phelps Dodge, on the 30th of August.

The third stock I see in this period is American Smelting and Refining, which is a company we have been following for a great many years, but again I cannot tell you whether or not there was a specific recommendation.

Q What transaction occurred in that stock?

A This is a buy on the 9th of December, 1968.

Q I notice the dates of transactions you have

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

referred to are different. Can you tell from this document whether you recommended these purchase and the sale that you refer to in a group, as a matched set?

A No, I cannot.

Q Do you know of any document that would enable you to answer that question or refresh your recollection?

A No, I do not.

Q Are there any other securities there that are in the category you have been testifying with respect to?

A Not that I am sure of that are companies we followed, no.

Q In the Chase, Incorporated system or set of procedures that was in effect between April or May of 1967 and February of 1971, was there a record kept which showed on a day to day current basis the amount of cash which was available for investment in the Anderson accounts?

A Yes, I would say that at least in part of that period the cash sheet should reflect the cash position of the Anderson Company, and of the other Anderson accounts.

Q Would you look at the cash balance sheet for the Anderson Company for 1968?

A Yes, sir.

Q That shows, does it not, an opening balance, namely, a July 23, 1968 balance of zero, is that correct?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

A That is correct.

Q How did you determine at that time that there was no cash available for investment in the Anderson Company account?

A To the best of my knowledge, we started -- when we reinstated the account, we started with the securities that were in the portfolio and were given an idea of how much cash was available for investment.

Q From what source did you get the idea?

A From Mr. Anderson.

Q Do you have a specific recollection of Mr. Anderson telling you in or about July of 1968 that the Anderson Company had no cash available for investment?

A No. Mr. Anderson told me to make recommendations and the source of the funds or the amount of the funds was not disclosed.

THE COURT: Had you finished your prior answer?

THE WITNESS: I think I had.

Q Let me see if I can get this straight. In July of 1968 did you ask Mr. Anderson how much cash was available for investment?

A I don't know that I specifically said "How much cash is available for investment?" I asked Mr. Anderson what the ground rules were.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q Did he tell you that he was not going to enlighten Chase, Incorporated on how much cash was available for the Anderson Company to invest?

A To the best I can recall, he said all he wanted was recommendations.

Q Was that in response to a request for cash information that he said that?

A I believe it was.

Q Did you feel that you could counsel the account under that situation, under those circumstances?

A That isn't unusual, Mr. Devine.

Q Well, I would repeat my question: Did you feel you could counsel the account under those circumstances?

A Yes, sir.

Q I notice that the first five entries on this cash balance page are purchases which total approximately $30,000.00 --

THE COURT: During what period?

MR. DEVINE: July and August of 1968.

THE COURT: Anderson Company bought $30,000 worth of stock?

Q Is that correct, Mr. Spindler?

A They bought approximately $30,000 and sold $3,600, yes, sir.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Q At any time did you recommend to the Anderson Company how to generate the net amount of assets that were going to be required to make these purchases?

A I did not.

Q Does the cash balance record which you are looking at disclose to you whether or not the Anderson Company at that time had enough cash available to complete these transactions?

A The record of our cash balance sheet indicates that we were overdrawing the account to that extent.

Q And you are not sure whether these were purchase recommendations that you made or not, is that correct?

A I can only assume they were.

Q That they were?

A Yes.

Q Did you know at that time how much in total amount you were recommending be purchased?

A I was merely following the instructions as a result of our conversation, that he wanted recommendations.

Q Did he tell you in total dollars how much he wanted recommendations for?

A No.

Q How did you know to recommend purchases that totaled $30,000.00, approximately?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

A I believe when we first started I just gave him our latest thinking on the securities we were then buying and the amounts and the number of shares were discussed and I can't recall whether I specifically said 100, 200 or 500.

Q As of October 4, 1968, this cash balance record shows the Anderson Company account to be short $84,000.00 and some change, is that correct?

A That's correct.

Q And the next entry on that cash balance sheet is an $84,000.00 entry in the exact same amount as the short amount, equalizing the two amounts, is that correct?

A It is the same amount as the amount that was overdrawn on our cash balance, yes, sir.

Q What caused the influx of that cash?

A That was done to bring the cash balance to zero, for appraisal purposes.

Q That was a bookkeeping entry?

A Yes, sir.

Q Then when you started out on the next period, commencing in October of 1968, you began with a zero cash balance again?

A We maintained the zero cash balance, yes.

Q Did you inquire of Mr. Anderson whether they

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

were able to come up with the $84,000.00 and change that they were short?

A That was Mr. Anderson's problem.

Q Did you know when you commenced counseling in the October 1968 period whether or not you should recommend sales to generate $84,000.00 or whether there was more cash available so that you should recommend purchases? Did you know that?

A If Mr. Anderson told me that, yes, but he did not.

Q Did you inquire of him?

A I did not.

Q What does the phrase "investment supervisory services" mean to you?

A Well, until recently I have never really considered it, but --

Q When did you first consider it?

A Well, in the past several weeks.

Q In the period from 1967, when you joined Chase, Incorporated, through most of 1974, you never considered what that phrase meant, is that true?

A That's true.

Q Do you know if that phrase, "investment supervisory services," is used in any statutes or regulations which pertain to your profession?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQ. NEW YORK, N.Y. 10007

A I do now.

Q When did you learn that for the first time?

A When I saw the form filed with the Securities and Exchange Commission.

Q You mean the form ADV?

A Yes.

Q When did you first see that?

A I don't know which day, but within the past several weeks.

Q I show you Plaintiff's Exhibit 46. Have you ever seen that document before?

A Yes, I have.

Q When did you first see it?

A I can't recall when I first saw it.

Q Would you refer to that as a bible sheet?

A This is what I would refer to as the bible sheet, yes, sir.

Q Did you cause it to be prepared?

A I don't think so.

Q Have you ever seen forms like that in use at Chase, Incorporated in other accounts, and I mean other than the Anderson Company accounts?

A Yes, I have.

Q Have you ever had occasion to cause a document

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Mr. Spindler and H. Inches appear on Plaintiff's Exhibit 46 as the account supervisors.

A I can only surmise.

Q What is your surmise?

A That Mr. Inches was included as the back-up supervisor during the period when I might have been running the accounts, but in actual fact Mr. Inches covered for me on a group of accounts only when I was on vacation. He was never officially the back-up man in this portfolio when I managed.

Q Who was officially the back-up man when you managed?

A Mr. Chase.

Q Do you know why his name doesn't appear on this document?

A I do not.

Q In your tenure as the account supervisor on the Anderson accounts, did you ever have occasion to refer to Plaintiff's Exhibit 46?

A Never.

Q I show you Plaintiff's Exhibit 11. Was it your procedure between April or May or 1967 and December of 1968 to use forms of this kind in counseling the Anderson accounts?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

A I believe it was.

Q Was that your practice throughout that period?

A It was my formal practice, yes.

Q Do you recall whether in the second half of 1968 you issued any of this type of form to the Anderson accounts?

A I can not recall.

Q Would the black book refresh your recollection on this subject?

A I doubt it, Mr. Devine. When I looked in there I looked specifically for those dates and found nothing.

Q Is there any other source at Chase, Incorporated which would give you information which might refresh your recollection on this subject?

A Other than the cash balance sheet that I used as a reference.

Q That was not sufficient to enable you to testify as to whether particular transactions were specifically recommended, is that correct?

A That's correct.

Q Under the Chase, Incoporated system the procedures that were in effect between April or May of 1967 and February of 1971, was there any record kept which showed the current tax posture of the client?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

THE COURT: What do you mean by a current tax posture? Whether he paid his taxes or was delinquent, or what?

MR. DEVINE: I mean the net current long-term gain, short-term gain, long-term loss, short-term loss, for the tax year to date.

A There is a record in the book.

Q In the black book?

A In the black book, covering sales in the accounts.

Q Would you turn to that, please.

A Do you have a specific account? Do you want me to look at the company account, or which one?

Q Let's look at the company account.

A All right.

Q You are looking at a page entitled "Carry Over From"?

A Yes.

Q And it sits in the black book lengthwise, is that right?

A That's correct.

Q Is it possible to evaluate from this record alone the capital gain or loss position of the Anderson Company at any given point?

A Assuming our input is correct and the transaction

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. [illegible]

from the sale side is correct, it would be possible to arrive at a figure at any point, yes, sir.

THE COURT: When you say "your input is correct," you mean assuming your client gave you all the information that pertained to that apart from what you also had?

THE WITNESS: Yes, sir.

Q Does this record reflect transactions in capital assets other than securities which were in the Anderson accounts, and in this case, the Anderson Company account?

A Does it reflect assets?

Q Capital asset asset transactions by the Anderson Company other than those in securities held in the account.

A Not that I can see here, no, sir.

Q Would you need that information to correctly evaluate the current tax position from a capital gain and loss standpoint at any given time?

A That would be a requirement.

Q Was there any procedure in effect at Chase, Incorporated to obtain that kind of information on a regular basis?

A I did not.

Q Do you know if the firm had a procedure between 1966 and 1971 with respect to obtaining this information?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

A There was no set information.

Q Was there any set procedure for obtaining the income tax bracket of the client at this time?

A Not set procedure. Can I enlarge on that?

Q Absolutely.

A In investment counseling, depending on the client, you become involved with the client and with their outside means in varying degrees, and when you are shut out, you do the best you can with the information you have. When you are not, you can acquire a great deal of information and can do a better job.

Q Did you ever make an inquiry of Mr. Anderson with respect to capital asset transactions not involving investment securities,in response to which he refused to give you the information you sought?

A He never refused that type of information.

Q Between 1966 and February of 1971, did Chase, Incorporated have a system or procedure with respect to keeping track of the tax basis of securities which were in clients' accounts?

THE COURT: When you say "in clients' accounts", you are talking about under supervision by Chase, because there were many more securities in this client's account, some of which were known and some of which were unknown

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK, N.Y.

to these people, according to the evidence to date. If you are talking about securities under supervision, use that term so that I understand when you refer to "in clients' accounts" you are not talking about what was in Eastman Dillon and Legg and Loeb Rhoades.

Q I am referring to all security positions that Chase, Incorporated had knowledge of.

THE COURT: Beyond those under their supervision? I would like to know whether you are talking about the supervised list or the supervised and unsupervised editions.

MR. DEVINE: In the plaintiff's view, your Honor, all securities, once a position was taken, fell under the counseling of Chase, Incorporated. So once they knew of a position they were then supervising that position.

THE COURT: Is that what the contract said, that he could go off on his own and saddle the supervisor with unsupervised purchases?

MR. DEWINE: I don't believe the contract reads that way, your Honor.

BY MR. DEVINE:

Q Let me ask the question in two parts: With respect to securities as to which Chase, Incorporated at any time made a specific purchase recommendation, did

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

Chase, Incorporated have any system or procedure for keeping track of the tax basis of that security?

A Yes. Our procedure, if you are interested in the mechanics --

Q Yes.

A -- was to take the information provided by the broker's confirmation, it was checked and a security card was created for every new position. That security card then became the tax basis for that account. It never purported to be an appropriate tax record for a tax return.

Q If the account purchased more than one lot at different times and at different prices of the same security, what was done with respect to the tax basis?

A The lot was entered on the purchase date of the lot and, for Massachusetts purposes, the lots were combined for average cost purposes.

Q What about Federal purposes?

A Federal purposes, we maintained tax data by lot and purchase date.

Q Will you look through the black book and see if you find the security card for Anaconda Company in the Anderson Company account?

A I have it.

Q Under Federal tax basis, does that indicate a buy

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y.

lot basis record?

A Yes.

Q Or does it indicate an average basis?

A On the top line?

Q Yes. Isn't that the line you would refer to?

A No. I would refer to the lots. Here is a lot on 12,19. 1,12,20; 1,12 --

Q What about the box marked "Adjusted Federal Cost"?

A That is an average cost.

Q That was not used for tax basis purposes?

A We did not file tax returns.

Q I am trying to determine if the records disclosed the information with respect to tax basis

A Yes, it did, and we felt confident that we could identify lots for Federal purposes, from this security card.

Q Did you ever inquire of Mr. Anderson what method was being used in the Anderson Company account with respect to tax basis identification when there is more than one lot of the same security?

A No, I did not.

Q Were there occasions when the tax basis information was not filled in on these security cards?

A There might have been one or two instances where we did not receive information for the transaction, or where the account was originally booked and we did not have purchase date nor the data, yes.

Q In those instances did you personally make any effort by contacting Mr. Anderson or the brokerage house to determine the missing information?

A I can't recall.

Q In 1967 were you using the Chase Fund of Boston as a standard of comparison for evaluating the performances of the Anderson Company account?

A At one point in time we discussed a better guide as to how well we were doing, and I think it was in 1967 that we thought we would match our performance with the Chase Fund of Boston. I am not sure of the dates.

Q Why was it that you felt it was appropriate to do that?

A I believe Mr. Anderson felt that anybody could beat the averages, and let's find something else to see how well we were doing.

Q It wasn't Mr. Anderson that made the comparison, was it, wasn't it you?

A I made the suggestion.

Q For making that comparison?

SOUTHERN DISTRICT COURT REPORTERS AUTHORITY

were similar?

A No. I felt the Anderson Company account was more aggressive.

Q Nevertheless, you felt the comparison was appripriate?

A It seemed appropriate.

Q I show you Plaintiff's Exhibit 57, and I note that this is a xerox and ask if you can identify what this document is, despite the xeroxing?

A Yes. This is a series of cards that would represent a standard cross reference list that was maintained by our firm in 1967.

Q What was the purpose of the cross index card system that you referred to?

A The purpose of this card was to give us an indication of the number of shares held in each security that were in portfolios managed by Chase.

The normal procedure was to enter the account number and the number of shares on the appropriate card when a new position was taken.

Q Was this card meant to reflect at any moment in time the status of all clients of Chase, Incorporated in a particular security?

A That was the intent, yes, sir.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
[illegible] N.Y. CO 7 4580

did not remain as the back-up man on the account, is that correct?

A That's correct.

Q At or about the time when Mr. Inches took over for you on the Anderson accounts, did you meet with Mr. Anderson regarding the methods that were to be followed in servicing the accounts thereafter?

A I did not meet with Mr. Anderson.

Q Do you have any knowledge as to whether or not Mr. Inches had a meeting with Mr. Anderson on that subject?

A I do not.

Q Do you have any knowledge as to whether or not Mr. Chase had any meeting with Mr. Anderson on that subject at about that time?

A At that time, I did not.

Q During 1967 did you recommend that the Anderson Company account purchase Allis Chalmers?

A I may have. I cannot recall.

Q Is there any document to your knowledge here today we could show you which might refresh your recollection on that subject?

A Not if it isn't on a recommendation form, I doubt it.

Q You have the black book in front of you. Will

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

structure?

A To the best of my knowledge, that was the point at which we did institute a different minimum.

Q Do you recall what category of account had the highest minimum under that new fee structure?

A Non-discretionary.

Q Do you recall what other categories there were and were they ranked in order of size of the minimum?

A There are two, discretionary and non-discretionary, and the fee was the same, but we charged an extra $500, I believe, a year for non-discretionary accounts.

Q Do you know which minimum the Anderson accounts were charged?

A I do not recall.

MR. DEVINE: I have no further questions, your Honor.

- - -

CROSS EXAMINATION

BY MR. DIAZ-CRUZ:

Q Mr. Spindler, you just testified as to certain securities that Mr. Devine listed for you as to whether or not you had recommended the sale thereof, and I wonder, sir, if you know whether or not Ebasco, which was one of those companies, one of those securities that you testified

to, was recommended to either of the Anderson accounts by Chase, Inc.?

A I feel certain it was not.

Q Would your answer be the same, Mr. Spindler, to New Britain Machine?

A Yes.

Q Did Chase, Inc. recommend to either of the Anderson accounts the purchase of Railweight?

A No.

Q Had you, Mr. Spindler, prior to the period when the Anderson Company account had left the office, recommended that Railweight be sold, to Mr. Anderson?

A I can't recall we recommended its sale.

THE COURT: Well, the exhibits very clearly talk about sale recommendations on December 1, 1966 of 800 Railweight for the Company account, and 714 Railweight for Mrs. Anderson's personal account.

MR. DIAZ-CRUZ: That is correct, your Honor.

Q Mr. Spindler, had you recommended to either of the Anderson accounts the purchase of National Casket?

A No.

Q Still looking at Plaintiff's Exhibit 18, the list attached thereto, Mr. Spindler, had you recommended or did you ever recommend to either of the Anderson

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, N.Y. CO 7-4580

accounts the purchase of Enterprise Fund?

A Never.

Q Did you, sir, recommend to either of the Anderson accounts the purchase of Berman Leasing?

A No.

Q Did you ever recommend to either of the Anderson accounts the purchase of Planet Oil?

A No.

Q Did you ever recommend to either of the accounts the purchase of Swift and Co.?

A I cannot recall, but I doubt it.

THE COURT: What was that list you were reading from?

MR. DIAZ-CRUZ: That was the list, your Honor, that is attached to Plaintiff's Exhibit 18.

THE COURT: Dated when?

MR. DIAZ-CRUZ: It doesn't have an actual date, your Honor, but it was attached to the July 23rd letter, which is Plaintiff's Exhibit 18.

Q Mr. Spindler, still on the same list, which is attached to Plaintiff's Exhibit 18, do you recognize, sir, what A. E. Co. stands for?

A I am not sure.

Q Could that, sir, be the Anderson Engineering Co.?

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

A Could have well been.

Q And as to the three first entries on that list, Mr. Spindler, did you ever recommend to either of the Anderson accounts that they purchase Anderson Engineering Co. securities?

A Never.

Q When did you become a member of the securities selection committee at Chase, Inc.?

A Shortly after joining the firm, in April, May 1967.

Q Were you a member of that committee continuously until February of 1971?

A During that period I was a member, yes.

Q Can you briefly explain the operation of the securities selection committee?

A Yes. Do you care about the composition or --

Q Why don't you give us the composition.

A The composition of the securities selection committee was designed to have members from all part of John P. Chase, Inc. They were all senior officers of the firm and their primary function was to review all recommendations from the research department and pass on those names that were considered acceptable for the Approved List or those names that might be deleted from the Approved

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
NEW YORK

List?

Another function was to review the recommendations again of the research department as to ratings of all of the securities on our Approved List or "A" Approved List.

Q Did the securities selection committee act on oral or written recommendations from the research department?

A Oral recommendations were the rule for rating changes; written recommendations were a requirement for any stock that was added to either list.

Q I show you Defendant's Exhibit 43 and I ask you whether you can recognize that document, sir?

A Yes, I can.

Q What is that document?

A That is an abbreviated form, and in this case the only form, prepared by the research department for the securities selection committee.

MR. DIAZ-CRUZ: Your Honor, we introduce Defendant's Exhibit 43.

*** (Defendant's Exhibit 43 received in evidence.)

Q During the course of deliberations concerning the addition of securities to the list, was the author of Defendant's Exhibit 43 called in before the securities

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTS

selection committee?

A Yes.

Q I show you a series of documents that have been marked as Plaintiff's Exhibit 51, and I ask you, sir, whether you recognize those documents?

A Yes.

Q What are those documents?

A This is a report by the chairman of the securities selection committee that immediately followed approval of all changes made by the securities selection committee sent out to the staff.

Q Were these documents circulated to all account supervisors?

A All account supervisors and, in most cases, the clerks as well.

Q In connection with situations where new securities were added to the list by the securities selection committee, did the account supervisors receive any documents in addition to Plaintiff's Exhibit 51?

A Yes.

Q What were those, sir?

A The account supervisors received all of the written information presented to the securities selection committee when the name was approved.

Q And that would have been the document that is marked as Defendant's Exhibit 43?

A That or any other documents presented by the the analyst.

Q How often were the Approved and "A" Approved Lists issued during the period?

A The actual list itself?

Q Yes. How often were they reissued?

A They were updated on a continuing basis with the changes by the securities selection committee, but they were actually printed about once a quarter.

Q In addition to the securities selection committee meetings, were there meetings of John P. Chase that account supervisors participated in?

A Two other meetings, yes.

Q Can you briefly describe to us, sir, those two other meetings?

A Well, the first meeting is the morning meeting that is for all of the staff. It is usually a half hour to three quarters of an hour meeting, where the staff is brought up on all the latest developments, primarily from the research department, or any other items of interest the staff should know about. The second, probably most important from an account manager's point of view, was the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

weekly meeting where the recommendations of the securities selection committee concluded usually the day before were presented to the account managers for their comments, and if the name happened to be approved, the research analyst was present at that meeting.

Q Did you at any time make a formal recommendation to either of the Anderson accounts of a security that had not undergone this process you have just described?

A To the best of my knowledge, no.

Q After the transition period from your supervision of the Anderson accounts to Mr. Inches, did there ever come a time when you discussed the Anderson accounts with him?

A Yes.

Q Do you specifically recall, Mr. Spindler, discussing short sales in the Anderson account with Mr. Inches?

A That was the subject, yes.

Q Do you recall, sir, what he said to you?

A I recall he was concerned that there was evidence of short selling in the Anderson Company account, and I don't recall whether at that time there was also short selling, evidence of short selling, in Mrs. Anderson's account, and Mr. Inches was trying to bring me up to date,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

trying to find a solution. That is about all, I guess, he mentioned.

Q Did Mr. Inches say to you at that time that he had recommended to the Anderson accounts, or to Mr. Anderson in connection with the Anderson accounts, that the short positions be closed?

A Not at that time, but subsequently.

Q In a subsequent conversation with Mr. Inches, is that correct?

A Yes.

Q I hand you two sets of documents marked as Defendant's Exhibits 48 and 49, and I ask you whether you recognize those documents?

A These are records of our securities cards. I recognize them.

Q Are those the same type of card you testified to yesterday, included in the black book?

A Yes, sir.

Q Do you recognize those security cards as pertaining to any specific accounts?

A By the account designation, yes.

Q What accounts do those pertain to, sir?

A Well, I see these are Mrs. Anderson's, A 24 A, and A 24 C would be the Anderson Company account. I didn't

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

look at all of them.

MR. DIAZ-CRUZ: Your Honor, we offer Defendant's Exhibits 48 and 49 in evidence.

(Defendant's Exhibits 48 and 49 for identification were received in evidence.)

Q Mr. Spindler, I show you Defendant's Exhibit 50, and I ask you whether you recognize that document?

A I do.

Q What is that document?

A This is a memo sent to all account managers reflecting, again, either a change in securities selection committee rating or corporate change in the account itself. It is a document intended to bring the portfolio manager up to date on the corporate change or alert the portfolio manager as to a sale recommendation.

Q Is this what is commonly known as an alert sheet?

A This is not an alert sheet, no.

Q Do you recognize in that memo which you have identified as in any way pertaining to the Anderson Company accounts?

A Yes.

Q How do you identify that, sir?

A By the account number.

Q Is it your testimony, Mr. Spindler, that this

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
NEW YORK, N.Y. CO 7-4580

sheet was distributed to account managers or supervisors to alert those holders of -- those accounts holding particular securities as to changes in those securities or companies?

A A proposed change or a capital change, yes.

MR. DIAZ-CRUZ: Your Honor, we offer Defendant's Exhibit 50 in evidence.

(Defendant's Exhibit 50 for identification received in evidence.)

Q I show you a document marked as Defendant's Exhibit 58 for identification and I ask you, sir, what that document is.

A This is a research brief prepared by the analyst in question.

Q What is the function of a research brief, Mr. Spindler?

A The function of a research brief is to put in writing the analyst's viewings of any pertinent points he feels should be called to the attention of the managers.

Q What is the distribution of the research brief?

A The research brief is internal.

Q Is it distributed to all account supervisors?

A Yes.

MR. DIAZ-CRUZ: Your Honor, we offer Defendant's

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Exhibit 58 in evidence.

(Defendant's Exhibit 58 for identification received in evidence.)

Q I show you a document marked as Defendant's Exhibit 51, and I ask you, sir, whether you recognize that document?

A Yes, I do.

Q What is that document?

A This is a chart of various market indices that is included in a chart book on a quarterly basis.

Q Can you for the record identify the different types of indices that are charted in Defendant's Exhibit 51?

A Yes. It includes the Dow indices, including the industrials, the 40 bonds, utilities, and the transportation index. It includes the New York Stock Exchange composite, the broadly based index of the New York Stock Exchange, and the Standard & Poor's 500.

Q Does that document include the graph of those indices for the years 1966 through 1971?

A Yes, it does.

MR. DIAZ-CRUZ: We offer Defendant's Exhibit 51 in evidence, your Honor.

(Defendant's Exhibit 51 for identification received in evidence.)

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

Q Have you ever recommended to any client of yours that he sell short a security?

A I have not.

Q Have you ever recommended to any client of yours that he short sell against the box?

A No.

Q Have you ever recommended to any client of yours the purchase of puts?

A No.

Q Have you ever recommended to any client of yours the purchase of calls?

A No.

Q Have you ever recommended to any client of yours the use of margin in their accounts?

A A margin account with a brokerage firm, no.

Q During the course of this trial we have been referring to your company as Chase, Inc. Is that what you call it, sir?

A No, we do not.

Q What is it that you call it?

A It is John P. Chase, Inc.

Q And why is that, Mr. Spindler?

A Well, John P. Chase, Inc. is really a reflection of a man who spent 42 years building this company. I think

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

with some justification Mr. Chase is proud of what he has put together, I think he is satisfied that the structure of the firm is what he was looking for in trying to develop a vital and on-going investment counsel company, but I think, more importantly, most of us at Chase realize the impact of this man and the deep seated interest he takes in the operations of the company. It is his name, his company, or was his company, and it isn't unusual for John Chase to take an intense personal interest in almost every client that came into that door as a result of his record, or his personality. Normally, when he is in the office, he reviews every single appraisal letter that goes out, and at the time we were doing our appraisals in this form he reviewed every account that he was responsible for before the appraisal was drawn. It is part of him.

MR. DIAZ-CRUZ: Your Honor, we have no further questions.

- - -

REDIRECT EXAMINATION

BY MR. DEVINE:

Q Mr. Spindler, was it not your earlier testimony that Foxboro was a recommendation of Chase, Incorporated?

A I believe I testified that it was one of our

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

H E N D E R S O N I N C H E S, called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVINE:

Q Mr. Inches, are you employed at the present time?

A Yes.

Q By whom?

A John P. Chase, Inc.

Q When did you begin that employment?

A In 1959.

Q What position at Chase, Incorrorated did you hold in July of 1968?

A I was investment research analyst.

Q Is that something different than what we have been referring to as an account supervisor during this trial?

A Yes, it is.

Q Did there come a time when you became an account supervisor?

A Yes, there did.

Q When was that?

A Approximately early 1968.

Q So that in July of 1968 you had a dual function,

is that correct?

A That's right.

Q Did there come a time when you were assigned back-up responsibility on the Anderson accounts?

A No, sir.

Q At no time were you the back-up man on those accounts?

A I don't believe so.

Q When did you first speak to Mr. Anderson, either in person or on the telephone, with respect to the Anderson accounts?

A Will you repeat that?

A When did you first speak to Mr. Anderson in person or on the telephone with respect to the Anderson accounts?

A In late 1968.

Q Was that a personal conversation or a telephone conversation?

A It was a telephone conversation.

Q What was said on that occasion and by whom?

A I called Mr. Anderson five days after being assigned the accounts, and we agreed to a meeting to discuss the accounts.

Q You say five days after the assignment?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

A Approximately.

Q Do you know the precise date on which the assignment was made?

A No, I don't.

Q Is there any particular reason why you recall it was five days after?

A No special reason. It was our policy to call immediately.

Q Did the meeting that you discussed in this telephone conversation come about?

A How did it come about?

A Did it come about.

A Yes.

Q When did it occur?

A In late 1968.

Q Do you know what month it occurred?

A I can't say for sure.

Q Could it have been October?

A I don't believe so.

Q Are you sure it was not in 1969?

A I am not certain.

Q It could have been in 1969?

A I believe it was in 1968.

Q Where did this meeting take place?

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

A In my office at John P. Chase.

Q In Boston?

A In Boston.

Q Who was present at that meeting?

A Mr. Anderson and myself.

Q What was said and by whom?

A We discussed the accounts at length, we went into the short positions that I had understood he had had, and we discussed the accounts in general as to what he wanted to receive from Chase within the framework of the John P. Chase organization, and we basically agreed, with his consent, that we follow a system of phone calls and face-to-face communication. He was largely interested in a flow of ideas from John P. Chase.

Q Can you recall anything else being said at that time?

A I specifically had told Mr. Anderson that we would not recommend any short positions in the account, or other types of hedged operations.

Q Anything else?

A That's it.

Q Do you recall Mr. Anderson saying anything to you?

A Mr. Anderson agreed that the program as established at the meeting would be entirely acceptable

to him. I told him I would check with Mr. Chase and make sure we were on the proper path.

Q Did you check with Mr. Chase?

A Yes.

Q When did you do that?

A Approximately the same time.

Q When you say approximately, do you mean the same day or same month?

A Well, within a few days.

Q On this occasion when you met with Mr. Anderson in your office did you have lunch on that day with Mr. Anderson?

A I believe we did.

Q Where did you have lunch?

A I don't recall the restaurant.

Q Do you recall who was present at that lunch?

A Mr. Anderson and I.

Q Do you recall who picked up the tab?

A I don't recall specifically.

THE COURT: Was it a good lunch?

THE WITNESS: That is an interesting thought, your Honor. I think it was quite pleasant.

Q You don't recall where it occurred, what restaurant or club?

THE COURT: It wasn't Locke-Ober's, was it?

THE WITNESS: It could have been. He frequently took me to his club, t[illegible] Tennis and Racket Club, and it might have been there.

Q When you became the primary supervisor on the Anderson accounts, who was the back-up man?

A Mr. Chase was the primary back-up man.

Q Do you recall being deposed in this case, having your deposition taken?

A Yes, I do.

Q Do you recall being asked at that time who the back-up man was?

A Yes.

Q What did you answer?

A I believe I said Mr. John P. Chase, and in the transitional period between the accounts being assigned to me and my taking them over, that Mr. Spindler was helpful and could have been considered a back-up man during that phase.

Q How long did that phase last?

A A few months.

Q Do you recall being asked this question at your deposition: "What was Mr. Spindler's function with respect to the Anderson Company account and the Alice

Anderson account following your assignment to those accounts?" and do you recall giving this answer, "He was classified as the number 1 back-up man of the account."? Do you recall that?

A Yes, I do.

Q After your meeting with Mr. Anderson in Boston, when did you next speak to him?

A I spoke to him approximately every two weeks.

Q When did you next meet with him personally?

A I cannot say exactly.

Q Do you have any recollection of meeting personally with Mr. Anderson again after that first occasion?

A Yes, I do.

Q When do you recall meeting with him again?

A I can't give you a specific date.

Q Can you give me a year?

A Give you a year?

Q Can you give me a year in which you met with him personally after your first meeting.

A I believe I met with him within a month after that initial phone conversation.

Q Would that be in January of 1966?

A I can't say.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Q Is that the time frame we are talking about, 1969?

A Yes.

Q Where did that meeting take place?

A I don't recall specifically.

Q Do you recall whether it was in Boston or New York?

A It may have been in New York.

Q What do you recall of that meeting? Do you recall who was present?

A Mr. Anderson and myself.

Q Do you recall what was said at that time?

A We normally ran over all of the securities in the portfolio, particularly with reference to current information we might have on a specific security.

Q I am asking if you have any specific recollection of that particular meeting.

A Not specifically.

Q Following that meeting did you ever meet with Mr. Anderson again?

A Yes.

Q When next do you recall specifically meeting with him?

A I believe several additional times in 1969, or

SOUTHERN DISTRICT COURT REPORTERS

a personal basis.

Q Do you recall where any of these meetings took place?

A Some of these meetings took place at Legg and Company.

Q In New York?

A Followed by a luncheon.

Q In New York?

A In New York.

Q Do you recall specifically what was said at any of these subsequent meetings?

A There was a general review of the portfolio at each meeting, and I gave him specific suggestions at the time, my recommendations as to what should be done in the portfolio.

Q Do you recall any particular meeting and discussion of any particular security at any particular meeting?

A Yes, I can. My meetings with Mr. Anderson in New York usually either preceded or followed a meeting with his neighbor at Legg and Company, Mr. Jim Finley, who was a petroleum analyst of some note whom I knew from my research endeavors in the petroleum field. So it was an opportunity to see both Mr. Finley and Mr. Anderson at approximately the same time.

SOUTHERN DISTRICT COURT REPORTERS

Q I am trying to get down to specific meetings. Do you recall in 1969 a specific meeting with Mr. Anderson following the first two that you have talked about, which you can place in any time frame?

A I believe I had at least two additional meetings with him on a personal basis.

Q Do you recall when the first of those two was?

A I cannot give you a specific date.

Q Can you recall when the second of the two occurred?

A No.

Q Can you recall whether either was in New York?

A I think probably both of them were in New York. There was a research individual at John P. Chase searching out new situations in order to give recommendations to the security selection committee.

Q At the first of th5 two meetings you recall in 1969, the latter part, do you recall specifically any securities that were discussed at that time?

A Yes.

Q What securities were discussed?

A I discussed my petroleum recommendations, frequently the ones that I had just seen that day. I visited with Atlantic Richfield, Cities Service, a number

of company treasurers and/or presidents in New York on a regular basis, and I frequently started off with those recommendations.

Q Do you recall specifically discussing Atlantic Richfield with Mr. Anderson at one of these meetings?

A Yes.

Q What did you say?

A I told him I thought it was an outstandingly attractive stock at th5 moment, based on my findings with management.

Q Do you recall discussing Cities Service with Mr. Anderson at any of these meetings?

A Yes, I do.

Q What do you recall saying on that subject?

A I felt that Cities Service was a hold recommendation at that time.

Q Did either of the Anderson accounts hold Cities Service at that time?

A Yes, I believe one account did.

Q At about the time you took over primary responsibility on the Anderson accounts, did you have any discussion with Mr. Chase with respect to those accounts?

A Yes, I did.

Q When did that discussion take place?

A Towards the end of 1968.

Q Was it one discussion or more than one?

A It was several discussions.

Q Would you address yourself to the first discussion, please, and tell us when it occurred, as well as you can recall, and what was said?

A I believe it was towards the end of 1968. Mr. Chase and I talked extensively about the account and he wanted to be fully informed that Mr. Anderson took some undue risks, and also hedge positions, or went short from time to time. He carefully instructed me to keep Mr. Anderson on track within the office policy outstanding as of the moment.

Q Did you say anything to Mr. Chase?

A Yes.

Q What did you say?

A I told him I would try my best to proceed on that tack, as outlined.

Q Did Mr. Chase say anything further to you on that occasion?

A He wished me good fortune.

Q When was the next time you spoke to Mr. Chase about the Anderson accounts?

A I can't recall the specific date.

THE COURT: I would like to have you, in the light of the colloquies, go over 1969 again and obtain from you your best recollection and present statement of what you recommended the Anderson Company people should sell of the supervised list.

THE WITNESS: Well, in the Anderson Company, 200 shares of Phelps Dodge, February 14. Also on February 14, a hundred of shares of Phelps Dodge. February 19, 50 shares of Scope. On March 4, 200 shares of Phelps Dodge. On June 19, 200 shares of Parke Davis. Also on June 19, 100 shares of Parke Davis.

I believe that is it.

THE COURT: Now I am going to call your attention to additional sales that you have not referred to for 1969 that appear on this tax sheet record for capital gain and loss transactions which have been marked Exhibit 39, to see if I can get your specific acknowledgment that this was or was not a recommended sale of a managed security. I am going to start in with Air West on January 2, 1969. Did you recommend that?

THE WITNESS: That sale?

THE COURT: Yes.

THE WITNESS: No, sir.

THE COURT: Occidental Petroleum, January 6,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

$3.60 preferred, apparently.

THE WITNESS: I don't recall on that one, your Honor.

THE COURT: New Britain Machine, on January 16?

THE WITNESS: No, sir.

THE COURT: 200 Youngstown on January 16?

THE WITNESS: No, sir.

THE COURT: 300 Asamera, on January 23rd?

THE WITNESS: No, sir.

THE COURT: 200 SMC, January 25th.

THE WITNESS: I don't recall.

THE COURT: A hundred Anaconda on January 29.

THE WITNESS: I don't recall, sir.

THE COURT: A hundred Ebasco on January 29.

THE WITNESS: I don't recall.

THE COURT: Parke Davis on January 30.

THE WITNESS: I meant to include that.

TEH COURT: That one you do recognize as one you recommended?

THE WITNESS: Yes, I believe so.

THE COURT: 200 Reading & Bates, January 31.

THE WITNESS: That wasn't ours.

THE COURT: 200 American Machine and Foundry on January 31.

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE
FOLEY SQUARE NEW YORK, N.Y. CO 7-4580

THE WITNESS: I don't recall.

THE COURT: 50 Planet Oil on February 19, and a hundred Planet Oil on the same date.

THE WITNESS: I don't recall on that one.

THE COURT: Ebasco Industries, March 14.

THE WITNESS: I don't recall.

THE COURT: American Smelting and Refining, March 7.

THE WITNESS: I don't recall.

THE COURT: 3,000 Reading & Bates, bonds, on June 3.

THE WITNESS: No, we didn't recommend that.

THE COURT: 100 USF and G, June 10.

THE WITNESS: That was not our sale.

THE COURT: 200 Tropacana, June 17.

THE WITNESS: That was not our sale.

THE COURT: 3 bonds of Reading & Bates on June 19.

THE WITNESS: That was not our sale.

THE COURT: 400 Canadian Superior Oil common short on January 12 and 13.

THE WITNESS: That is not our recommendation.

THE COURT: 50 Tampax on September 23.

THE WITNESS: That is not our recommendation.

THE COURT: 300 Gulf Life, October 14.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE WITNESS: I don't recall on that one.

THE COURT: Anderson Engineering Company stock, October 28.

THE WITNESS: Not our recommendation.

THE COURT: Cities Service common, October 31.

THE WITNESS: I don't recall on that one.

THE COURT: 100 Atlantic Richfield, November 17.

THE WITNESS: That is not our recommendation.

THE COURT: Some more Anderson Engineering Company on October 28.

THE WITNESS: That was not our recommendation.

THE COURT: National Health Enterprises, December 23.

THE WITNESS: That was not ours.

THE COURT: When you say those were not your recommendations, were those securities that if they were in the account at all got into the account other than through your recommendation.

THE WITNESS: Some of those issues were our recommendation, but not all of them. For example, Reading & Bates, he was selling a number 1 by recommendation on our recommended list, as an example. We had originally placed that stock in the portfolio, but it was an outstanding recommendation and it would be expedient for

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

take this as such a record: January 28, 200 shares of Metro, Incorporated. Did you recommend that one?

THE WITNESS: No.

THE COURT: February 2, First Mortgage Investment warrants.

THE WITNESS: No, sir.

THE COURT: March 9, Avnet.

THE WITNESS: I don't recall on that one.

THE COURT: Well, they made a lot of money on that one, that is a good one -- no, it is a loss, a lot of loss, not a lot of money.

Philip Morris, March 9.

THE WITNESS: That was not one of ours.

THE COURT: General Motors on March 9.

THE WITNESS: That was not under our supervision.

THE COURT: CMO Bonds on March 16.

THE WITNESS: Continental Mortgage Investors, probably.

THE COURT: They are marked as CMO, which I used to remember was Commercial Credit, but that may be something else now.

THE WITNESS: This was not our recommendation.

THE COURT: CMO six and a quarter convertible --

THE WITNESS: That was Continental Mortgage.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Johnson & Johnson, March 16.

THE WITNESS: That was never on our supervised list.

THE COURT: L.V.O. Corporation, April 21.

THE COURT: I don't recall.

THE COURT: Was that on your supervised list?

THE WITNESS: I don't honestly remember.

THE COURT: Transcontinental Gas Pipe Line, April 29.

THE WITNESS: That was not our recommendation.

THE COURT: Here is a call on Occidental and the second call on Occidental. Did you recommend any sales of calls?

A THE WITNESS: No.

THE COURT: Did you recommend sales of any options at any time for any of these Anderson accounts?

THE WITNESS: No.

THE COURT: Did you recommend any puts?

THE WITNESS: No, we didn't, sir.

THE COURT: Consolidated Oil and Gas, April 28.

the witness; I don't recall we recommended the sale.

THE COURT: Seabord World Air, and it looks like fives of 1986, sold April 28, did you recommend that sale?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE NEW YORK, N.Y. CO 7-4580

THE WITNESS: I don't recall.

THE COURT: Were the Seaboard convertibles on your supervised list?

THE WITNESS: I believe they were.

THE COURT: Canadian Superior Oil, and it seems to be a straight sale, April 28, 1970, 100 shares. Did you recommend the sale of that?

THE WITNESS: I don't recall.

THE COURT: Is there anything in the record there that indicates anything on the subject? That apparently was on your approved list.

THE WITNESS: It was, sir.

THE COURT: Do you know anything about how that sale came about?

THE WITNESS: Well, Mr. Anderson was selling rather freely and I don't know what our recommendation was at that time.

THE COURT: Austral common, April 28, did you recommend that one?

THE WITNESS: I don't recall.

THE COURT: Here is a short sale of Seaboard Company's Line on September 25. Did you recommend that?

THE WITNESS: No, I didn't, sir.

THE COURT: Here is a short sale of Parras

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

common, June 29. Did you recommend that?

THE WITNESS: No, I didn't.

THE COURT: A sale of Seaboard Company's Line, April 1971. I think we have gone through -- no, there is another sheet for the 1970's. I guess it is longer than I thought it was.

MR. DEVINE: Your Honor, maybe I can shortcut this. I have a couple of issues I am particularly interested in and I would focus on those.

THE COURT: There is a whole raft of short sales and I guess that is what I happened to have come upon now.

MR. DEVINE: Yes, that would be time consuming to go through.

THE COURT: I think we can cover the three pages of short sales with one question: Did you recommend any short sales of any securities between June and December of 1970?

THE WITNESS: No, I didn't, your Honor.

BY MR. DEVINE:

Q In January of 1969 did you recommend the purchase of Pargas by the Anderson Company?

A I believe I did.

Q Again in November of 1969 did you recommend an additional purchase of Pargas by the Anderson Company?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A I don't recall.

Q Would the black book refresh your recollection?

A Possibly.

Q Would you take a look, please, November of 1969.

THE COURT: Was that issue on the recommended list?

THE WITNESS: Yes.

A Will you repeat the question?

Q In November of 1969 did you recommend a purchase of Pargas to the Anderson Company?

A I don't recall.

Q Were you the researcher at Chase, Incorporated with respect to Pargas?

A Yes, I was, at the time.

Q Does that mean you had primary responsibility for keeping apprised of developments with respect to Pargas and reporting on those developments to the securities selection committee?

A Yes, I did.

Q Does the record that you have in front of you, the black book, reflect whether indeed there was a purchase of Pargas in November of 1969 by the Anderson Company?

A I am not certain.

Q In September of 1969 was it at your suggestion

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that the rating on Pargas was reduced from 1 to 3?

A The date again, please?

Q September of 1969.

A I believe it was reduced.

Q Was it at your suggestion it was reduced?

A I believe it was.

Q At that time did you recommend to the Anderson Company that it sell its position in Pargas?

A I would have informed Mr. Anderson of the change in rating.

Q Did you recommend to the Anderson Company that it sell its position?

A I don't recall.

Q In February of 1970 did you suggest a further reduction in the rating of Pargas from 3 to 4?

A I believe I did.

Q At that time did you recommend to the Anderson Company that it sell Pargas?

A I believe I did.

Q You believe you did?

A Yes.

Q Is there any notation of your recommendation?

A I am not sure that there is.

Q Well, would you look at any source that might

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help you in that regard?

A I don't know.

Q Do you recall whether there came a time in 1970 when Mr. Anderson caused the Anderson Company to sell Pargas short against the box?

A I do not recall specifically.

Q Do the records in the black book enable you to refresh your recollection as to whether or not such a short sale against the box occurred?

A Will you give me that date again?

Q I asked you if you recalled, but I believe the date was May of 1970.

A I cannot tell from this.

Q Do you have any recollection as to whether a time ever came when you recommended to the Anderson Company that it sell its position in Pargas?

A Mr. Anderson and I --

Q Excuse me, I don't mean to ask an unfair question -- again, after February of 1970, when you testified earlier you did recommend its sale..

A I did talk to Mr. Anderson about that, I am quite certain.

Q You did again, after February of 1970, is that correct?

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A We talked about securities in the four-rating column.

Q Do you recall talkinm to him about Pargas after February 1970?

A Yes, I believe I did.

Q When next after February of 1970 did you discuss that security with him?

A I can't say for sure.

Q Can you place it by month?

A No, I cannot.

MR. DEVINE: Your Honor, could I have Plaintiff's Exhibit 37, which is a November 20, 1970 letter.

(Pause)

Q I show you Plaintiff's Exhibit 37 and ask if you have seen that letter before.

A Yes, I have.

Q When did you first see it?

A Mr. Chase and I talked about the letter before it was written.

Q What was said in that discussion and by whom?

A Mr. Chase and I talked about the extensive short position that Mr. Anderson had in both his mother's account and in the Anderson Company account, and we felt it behooved us to write a stronm letter to Mr. Anderson to

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FOLEY SQUARE NEW YORK, N.Y. CO 7-4580

see if he wouldn't come back in line with our way of thinking at John P. Chase.

Q With respect to the short positions against the box that then existed in the Anderson Company account, what was your way of thinking at Chase, Incorporated?

A I don't counsel short positions, whether they are naked short or short against the box.

Q Did you and Mr. Chase discuss at the time that letter was written precisely what it is that was being recommended to Mr. Anderson in that letter?

A Can you state that again?

THE COURT: He wants to know whether you and Mr. Chase talked about what that letter really says.

THE WITNESS: Yes, we did.

Q What was said on that subject and by whom?

A I think my previous testimony gives some idea of that. We talked about the extensive short position in the accounts. We were very alarmed and very concerned and particularly concerned that Mr. Anderson wasn't getting the full benefit of our research recommendations, which we had started to go along in many accounts in the summer of 1970, and we wanted to apprise him of the situation as it stood. We also wanted to indicate to him that we had thought, as he had known, through the Trade Winds,

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

that the low point had been reached some time in the May-June 1970 period.

Q At the time that letter was written, did you have any expectation or any hope as to what Mr. Anderson would do after receiving that letter with respect to the mechanics of dealing with the short positions against the box?

A I think the thrust of the letter --

THE COURT: He really wants to know did you believe that this stubborn individual was going to follow out what you were telling him.

THE WITNESS: Yes, I expected Mr. Anderson would follow through and cover these short positions, one way or another.

Q With respect to the short positions against the box, how many ways did you know of at that time to cover?

A He could either deliver from his own position, if he was short against the box, buy in the open market, to cover the situation.

Q At the time that letter was written, did you have any understanding as to which of the two alternatives Mr. Chase meant to recommend to Mr. Anderson?

A The letter says that Mr. Chase would like to have these short positions covered. I don't believe it

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FOLEY SQUARE NEW YORK, N.Y. CO 7-4580

goes into specifics as to how this would be done. We did not counsel short positions, did not get him into this position.

Q Covering a short position against the box in Pargas in November of 1970 would have been equivalent to purchasing Pargas at that time --

THE COURT: You don't cover against the box, you deliver against the box. You cover against the sale. You don't cover against the box in the street, if you want to talk street language. You cover against the sale or deliver against the box.

Q If the Anderson Company had covered against the sale of Pargas in November of 1970, would that have been equivalent to purchasing Pargas at that time?

THE COURT: That is self evident. It wouldn't be equivalent, it would be a purchase. The only way you can cover is to make a purchase.

Q Do you know what the rating of Pargas was on the Chase, Incorporated lists in November of 1970?

A I believe you established it was a 4.

THE COURT: He wants to know now, so that we can get at this thing very quickly, if the client was going to go out, the customer was going to go out and buy in the short, he would be left long with Pargas. At that

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

point, having done that and having reported that he had done that, he would then be long in the supervised list of Pargas. Was Pargas an appropriate vehicle to remain in the supervised list at that time, in your opinion? That is what all this is getting at.

THE WITNESS: It was not entirely appropriate, on a 4 rating basis.

Q Indeed, it was lower than 4, wasn't it? Had it not been removed from the list completely at your suggestion in November of 1970?

A I don't recall.

Q Were you still the researcher in charge of that security in November of 1970?

A I don't recall at this time.

Q Was it ever your practice with respect to the Anderson accounts to issue the blue or green purchase recommendation forms and the pink sale recommendation forms?

A We had a verbal agreement --

THE COURT: He is not asking you about that. He wants to know did you as a matter of habit issue blue and pink slips or did you just talk?

THE WITNESS: We did not deliver them on a non-discretionary account.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

on either of the Chase, Incorporated rating lists?

A An any time?

Q At any time.

A I don't honestly recall.

Q Do you recall whether there ever came a time when Mr. Anderson caused the Anderson Company to take a short position against the box in Foxboro?

A State that again?

Q Do you recall whether there came a time when Mr. Anderson caused the Anderson Company to take a short position against the box in Foxboro?

A I don't specifically recall.

Q Do you recall whether there was ever a time when you recommended covering a short position against the box in Foxboro with respect to the Anderson Company account?

A I don't recall.

THE COURT: Did you recommend that he go short in Foxboro?

THE WITNESS: No, I didn't.

THE COURT: Do you know anybody within Chase who recommended he go short in Foxboro?

THE WITNESS: No one in Chase would have recommended that, your Honor.

Q In January of 1969 or March of 1969 did you

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FOLEY SQUARE NEW YORK, N.Y. CO 7-4580

AFTERNOON SESSION

2:10 p.m.

H E N D E R S O N I N C H E S, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. DEVINE:

Q Mr. Inches, would you look at the black book, please, and particularly I would direct your attention to the cash balance page for the Anderson Company account, and ask if you can tell from that document the amount of cash that was available for investment by that account in December of 1970?

A Would you state that question again?

THE COURT: The cash available in December 1970.

THE WITNESS: We show a cash balance figure.

Q What was it, in December of 1970?

A $189,344.33.

Q As of what date?

A The last entry I have is November 17.

Q I am asking about December of 1970. What are your entries in December of 1970?

A We don't have an entry for that specific date.

Q What is the last entry?

A The last entry is the one I gave you.

Q Which is November what?

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A N ovember 17.

Q Why was it between November 17, 1970 and February 5, 1971 there were no entries made on that record?

A I don't know.

Q Were you responsible for the maintenance of that record during that period?

A My secretary posted the figures.

Q Who did your secretary report to?

A To me.

Q Was it your practice in 1969 and 1970 with respect to the maintenance of that cash balance record to adjust the balance at every appraisal period by making a bookkeeping entry that brought the available cash to zero?

A Normally we did this.

Q Was there any appraisal date in 1969 or 1970 on which you did not do that?

A I am not aware of it.

Q Would you look through the appraisal dates in 1969 and 1970 and follow with me these figures, and tell me as I go if this is correct or incorrect. In the February 1969 appraisal you made a bookkeeping entry that subtracted $25,596.99 from the cash balance, is that correct?

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A I am not with you yet.

Q February of 1969.

A Will you state the figure again?

Q $25,596.00, rounded to the nearest dollar.

THE COURT: What does that figure represent?

MR. DEVINE: The amount of the bookkeeping entry in February 1969 which brought the cash balance record to zero.

THE COURT: But what does that mean, there was that much money to invest? Is that what you are saying?

MR. DEVINE: My understanding is that as of the date of that appraisal the activity in the prior period, the prior four month period, had generated $25,596.00 net cash, and that that, as a bookkeeping matter, was subtracted on the appraisal of 1969 and removed --

A I don't see that figure.

Q How much was removed as of that appraisal?

A You better show this to me.

Q Do you show a February 1969 appraisal date on the record in front of you?

A Yes, we do.

Q Is that FFbruary 6, 19 -- excuse me -- was that February 6, 1969?

A Yes.

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Q How much was the bookkeeping entry on that date? Do you see the line marked "less funds"?

A My "less funds" figure is on June 6.

Q No, I am looking at February, 1969.

A You will have to point this out.

Q (Indicating)

A Okay.

Q How much is the figure?

A $25,595.00.

THE COURT: Let me see what it is you are looking at, please?

MR. DEVINE: I have a copy, your Honor (handing).

THE WITNESS: It is this figure right here, sir, on 2/6/69 (indicating).

THE COURT: Is this the figure you are talking about, on 2/4? Where is the $25,000 figure?

MR. DEVINE: It is very hard to read on this copy, your Honor (indicating).

Q With respect to the June 1969 appraisal date on your cash balance record, how much was the subtraction on that date?

A On June 6, 1969, the subtraction was $22,371.11.

Q On the October 1969 appraisal date, how much was the subtraction?

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A $76,720.51.

Q On the appraisal of February 1970, how much was the subtraction?

A $40,322.18.

Q In June of 1970, how much was the subtraction?

A $13,431.87.

Q Finally, in October of 1970, what was the amount?

A We didn't have a subtraction at that time.

THE COURT: I would like to know what these figures mean, spelled out in understandable detail. What do these figures purport to say?

Q Mr. Inches, will you respond to that?

A Mr. Anderson, I believe, had requested that the account be brought down to a zero balance at the end of a specific period --

THE COURT: What does that mean?

THE WITNESS: We showed no cash balance in the account for a specific period. I am not sure this was followed in every period, but it was, evidently, during this period.

THE COURT: How do you bring an account to a zero balance? What do you do to do that?

THE WITNESS: It is an offsetting entry, your Honor, of the amount outstanding on the cash balance.

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THE COURT: What do you do with that amount?

THE WITNESS: The amount is usually reinstated following the appraisal period.

THE COURT: In other words, what you are saying ot me is that you make an appraisal by the elimination of cash balances? Is that all it is?

THE WITNESS: That is what it is.

Q Can you point to any reinstating entries in 1969 or 1970?

THE COURT: Before we get to that, let's take the February 6, 1970 appraisal for the Anderson Company account. The second page of that expresses a certain number of figures. Do any of those figures and totals, as they are expressed, indicate that there is cash as well as securities in the account?

THE WITNESS: Looking at which date, your Honor?

THE COURT: February 6, 1970. There is no cash reflected there, is there?

THE WITNESS: No, there isn't. I am looking at the actual appraisal --

THE COURT: There is no cash in that appraisal, it is just an appraisal of securities.

THE WITNESS: That is correct.

THE COURT: Am I to understand that in addition

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

to the assets reflected in that appraisal, which is Exhibit 29, the Anderson Company had $40,332.00 in cash off the appraisal?

THE WITNESS: In which period, February?

THE COURT: The same date, February, 1970, February 6, 1970.

THE WITNESS: That's right.

THE COURT: In what form was that money, who was holding it, the Anderson Company or some brokerage house?

THE WITNESS: It was probably at Eastman Dillon.

THE COURT: Now, let's look at the Eastman Dillon account, for February 6, 1970, and tell me if there is a cash balance in that account?

THE WITNESS: No, there isn't, your Honor.

THE COURT: So that all your figure of these "cash balances" really means is that the differences between the sale price of securities and the purchase price of securities in the preceding period is $40,332.00, the sale prices being higher than the purchase prices of investments, isn't that right?

THE WITNESS: I believe that is correct.

THE COURT: And you don't know whether that $40,332.00 was pocketed, put into the Anderson Company accounts, used at the race track or anything else about it;

all that you know is that the results of securities trading for Anderson and Company represented a plus dollar amount of $40,000.00 above the cost of securities purchased, is that right?

THE WITNESS: That's right.

THE COURT: So you would then assume if the money was still extant and not applied to some other use that they had $40,000 worth of buying power?

THE WITNESS: That's correct.

THE COURT: This is not the record of a cash balance at all, it is buying power, providing it is not applied to another purchase, and to refer to it as a cash balance is a complete misnomer, isn't that correct?

THE WITNESS: Yes.

BY MR. DEVINE:

Q Did you inquire of Mr. Anderson from time to time the amount of cash that the Anderson Company had in certificates of deposit?

A Yes.

Q Did he ever refuse to tell you the amount?

A I don't believe he did.

Q Do you know whether in February of 1970 the Anderson Company had any certificates of deposit or banking accounts of any kind?

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A I don't know.

Q In November of 1970 in what respect did your view of the economic climate differ from that of Chase, Incorporated?

A My view didn't differ.

Q I show you Plaintiff's Exhibit 33. Is that your handwriting in the upper righthand corner?

A Yes.

Q Would you read that?

A "Doug: This is the most recent economic report for the office. It is somewhat more optimistic than yours truly's."

Q In what respect was it more optimistic than your views at that time?

A To give you an example, it stated in the text that housing starts could well be up 10 to 20 per cent in 1971, toward the 1,600,000 level, which is still a very modest level relative to housing needs. My reference to "somewhat" could be on the lower end of the 10 to 20 per cent spectrum, about 10 or 12 per cent, for example.

Q Your comment was directed to housing starts, or that is just one of them.

A That is an example.

Q In other respects were your views less optimistic

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Q At the time that was added, did you know the source of that cash?

A I don't recall at this time.

Q What was the date on which the fiscal year of the Anderson Company ended with respect to their 1970 tax return?

A I don't recall now.

Q At any time did you ask Mr. Anderson for the tax returns of either the Anderson Company or Mrs. Anderson for any year between 1966 and 1971?

A No, I didn't.

Q Was there ever a time when you asked Mr. Anderson for information about the funds or income needs or expenses of either the Anderson Company or Mrs. Anderson?

A I don't recall specifically.

Q Was there ever a time you can recall when Mr. Anderson was unable or refused to give you information of that kind?

A No.

Q What does the phrase "investment supervisor services" mean to you, if anything?

A It can mean a number of things. To me it means investment counsel service.

Q Investment counsel service, is that what you said?

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A Yes.

Q What does investment counsel service mean to you?

A Investment counsel service is a full line service with a thorough following of securities in a portfolio during the period under our guidance, and a constant updating of expectations on individual companies, about thoughts on switch candidates, new selections that might be suitable for the portfolio, things of this nature.

Q You say this was a continuous supervision?

A It was.

Q Would supervision of that kind necessarily be tailored to the individual needs of the clients?

A It would be tailored to the needs of the individual.

MR. DEVINE: No further questions, your Honor.

- - -

CROSS EXAMINATION

BY MR. DIAZ-CRUZ:

Q Mr. Inches, did there come a time in 1970 when you discovered that short sales had been made in Mrs. Anderson's and the Anderson Company accounts?

A Yes, there did.

Q When was that, sir?

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A In May of 1970.

Q What did you do about that, Mr. Inches?

A I spoke with Mr. Chase on the subject of short sales in these accounts, and we agreed to contact Mr. Anderson on this subject to make sure he covered as soon as possible.

Q Did you in fact contact Mr. Anderson and advise him of what you have just testified to at the approximate time that you described?

A Yes, I did.

Q Mr. Inches, were those positions closed, the May 1970 positions?

MR. DEVINE: I believe the witness said the instructions were to cover them.

MR. DIAZ-CRUZ: I am talking about the short positions.

MR. DEVINE: I object to the question in that it is phrased in terms of closing, and I think the witness previously said covered.

THE COURT: Read the record to me, Mr. Reporter.

(Record read.)

MR. DIAZ-CRUZ: I will rephrase the question, your Honor.

Q Were the short positions covered, Mr. Inches,

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in May of 1970?

A There had been some coverings.

Q Did there come a time after May of 1970 when short sales were made in the Anderson Company account and Mrs. Anderson's account?

A Yes.

Q When was this, sir?

A Short sales were continuing to be made through June, July and August, and for months thereafter.

Q In connection with the June period, what did you do about the short sales that were made in the account?

A We spoke to Mr. Chase -- both he and I talked to Mr. Anderson, as I recall it.

Q Were these telephone conversations?

A Yes, I believe they were.

Q Did you contact anyone outside of John P. Chase, Inc. in connection with the short sales in Mrs. Anderson's and the Company account?

A Yes, I did.

Q And who was that?

A The co-trustee on the Anderson trust, Mr. Whipple.

Q What did you say to him?

A I explained to Mr. Whipple the situation that had developed, the short positions in the account. This

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was not our responsibility nor our recommendation, and I thought as a family lawyer and co-trustee in the account he might have some method of getting Mr. Anderson out of this position.

Q Have you ever recommended to any of your clients that they sell a security short?

A No, I never have.

Q Have you ever recommended to any of your clients that they sell a security short against the box?

A No, I have not.

Q Have you ever recommended to any of your clients the purchase of puts?

A No, I have not.

MR. DIAZ-CRUZ: Your Honor, I have no further questions.

THE COURT: All right, step down.

MR. DEVINE: No redirect.

(Witness excused.)

- - -

MR. DEVINE: Your Honor, at this time I have no further witnesses to call. I would, however, like to offer certain documents which to this point haven't been marked, the first of which is a series of Anderson Company financial condition statements through this period, and

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

of Mrs. Anderson.

I am going to give you some data that you can address yourself to, which you may not have collated in your own thinking, and you can respond when you prepare your paper to the accuracy of my understanding on these points and their effect on your claims.

First, what is the exhibit number of the tax schedules that you marked in evidence?

MR. DEVINE: That was an attachment to one of the letters --

THE COURT: No --

MR. DEVINE: Oh, the schedules L, they are 67 and 68.

THE COURT: I draw your attention to Exhibits 67 and 68, which appear to indicate that the significant losses suffered by Anderson Company arose from short sales in 1970 and 1971. I track 34 short transactions in 1970 and 87 short transactions in 1971, which cost the account apparently $154,577.85. Also from the same data, it would appear that the net result of all trades in the Anderson Company account for the period 1966 to 1972 in long securities was a loss of $9,663.96.

In respect to Mrs. Anderson's trading, according to the tax schedules, Exhibits 67 and 68, she registered

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a net long term capital gain in the period of 1967 to 1971 of $19,545,93, minus a net short capital loss of $3,422.72, or a net gain of $16,123.20, in addition to the income she realized from time to time from the security portfolio.

Further, the tax schedules show in detail the following information: For the period from approximately the inception of the Anderson Company account, the 1966 transactions indicated a gain, short term gain, of $1,470.21; the 1967 transactions indicated a short term gain of $515.99, making a total up to that point of short gains of $8,886.20, together with a long term capital gain in 1967 of $14,474.01, and in 1968 a short term gain of $2,025.76, making a total, to that poirt, for the account of $10,811.96 of short term gains, to which should be added the long term capital gains in 1968 of $26,338.31, making long term capital gains to that point cumulatively of $40,812.32.

In 1969 the Anderson Company account showed a short term gain of $80.14 and a long term gain of $14,762.13, and the subtotals for the short and long gains for the account from inception to that point were, respectively, $10,992.10 of short gains, and $55,574.45 of long gains.

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In 1970, the short selling in the Anderson and Company account resulted in a net short term loss of $14,278.05, and a net long term loss of $25,269.62, and taken on a subtotal basis for the period of the account up through that time, the Anderson and Company account now showed a red figure loss of $3,285.95 of short gains and $30,304.83 red figure of long gains.

In 1971 with 87 short transactions, the Anderson and Company account loss $140,699.80 on short term losses, and $24,570.34 on long term losses, making a subtotal of all of the transactions from inception through that period of losses in the amount of $154,977.85 short term, and $49,839.96 losses long term. The total effect of these transactions from 1966 throumh 1971 was a red figure of short term losses of $143,985.75, and a black figure of $5,734.49 long term.

From the foregoing, it is perfectly apparent that the short transactions in 1970 and 1971 cost the account a total of approximately $230,000.00 in losses created by Donald Anderson's activity on the short side.

Now, Mrs. Anderson's trading, according to the tax schedules, which I have called to your attention, resulted from those schedules in a $16,123.21 net gain for the period from 1966 through 1971, and that breaks down

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as follows: The short term gains for 1967 were $1,396.53. In 1968 there was a short term loss of $3,500.73. In 1969, there was a short term loss of $1,231.47. In 1970 there was a short term loss of $87.05. There is no figure for 1971.

On the long term side, for 1967, a gain of $144.37, for 1968 a gain of $22,655.14, in 1969 a loss of $144.24, in 1970, a loss of $2,494.60, and in 1971, a loss of $2,114.74. The totals of these gains and losses amount to a net long term gain of $19,545.93, less a short term loss of $3,422.72, or a net gain as reported on tax returns of $16,123.21.

The evidence has gone into many side paths and byways to adduce figures, transactions, economic data and arguments not tied up to any substantive issue at stake in this case, and I assume that for the purpose of the issue of credibility these excursions were made and whatever point emerged on that issue was appreciated by the Court. These diversions of course have made it somewhat more difficult to concentrate on the substantive issues to be decided, but I believe that I have been able to keep the statutory and contractual issues clear in mind, nonetheless.

I think that is all I need say at the moment on

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

this, and I say these things in an endeavor to aid the brief writers to zero in on anything that they consider relates to the substantive side, and not to the credibility side. On that I will do my own judging, having seen and heard the witnesses and considered their testimony in the light of the facts and circumstances of the case.

Off the record.

(Discussion off the record.)

MR. FALES: Plaintiff has agreed to submit its brief on December 4, and defendant on December 16, both of those dates being dependent upon the plaintiff not asking for the minutes. If the plaintiff asks for the minutes, he wants an additional period of time equivalent to the time necessary to prepare the minutes.

MR. DEVINE: Correct.

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Joint Appendix Volume I

IS HEREBY ADMITTED.

DATED:

Attorney for

STATE OF NEW YORK
COUNTY OF NEW YORK

DAVID BARRY being duly sworn deposes and says: On July 25th, 1975 I served the within ~~record on appeal brief~~ VOLUME II JOINT appendix on White & Case ~~respondent~~ by leaving ~~mailing~~ one copy ~~three copies~~ thereof at his office located at 14 Wall Street New York, New York 10005 the attorneys for the Appellee

David Barry

Sworn to before me this 25th day of July, 1975

Lillian Weisberg

LILLIAN WEISBERG
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